MONTANA LEGISLATIVE HISTORY

Chapter 345 19 2001

Bill H _____ S 474 Original bill & history ✓ C

H. Committee on Business & Labor			S. Committee on Bus. & Labor		
Hearing Date(s)	_____	___C	Hearing Date(s)	_____	___C
	3/26	___C		2/7	___C
	_____	___C		_____	___C
	3-27	___C		2-19	___C
Date Out	3/27	___C	Date out	2/19	

Did this bill originate in an interim committee? ___Yes X No

Committee _____ Report _____

	Transmitted to House		
3/03	Referred to State Administration		
3/23	Hearing		
3/27	Committee Executive Action--Bill Concurred as Amended	10	7
3/27	Committee Report--Bill Concurred as Amended		
3/30	2nd Reading Not Concurred	44	55
3/30	Reconsidered Previous Action; Placed on 2nd Reading	53	46
	Died in Process		

SB 473 Introduced by Waterman *LC1624 Drafter: Fox*

Revise Board of Visitors Laws

2/14	Introduced		
2/14	First Reading		
2/14	Referred to State Administration		
2/15	Fiscal Note Requested		
2/16	Hearing		
2/20	Fiscal Note Received		
2/20	Fiscal Note Signed		
2/20	Committee Executive Action--Bill Passed	8	0
2/20	Committee Report--Bill Passed		
2/20	Fiscal Note Printed		
2/22	2nd Reading Passed on Voice Vote	49	1
2/22	3rd Reading Passed	49	1
	Transmitted to House		
3/03	Referred to Human Services		
3/26	Hearing		
3/27	Committee Executive Action--Bill Concurred as Amended	18	0
3/27	Committee Report--Bill Concurred as Amended		
3/30	2nd Reading Concurred	98	0
3/31	3rd Reading Concurred	98	2
	Returned to Senate with Amendments		
4/05	2nd Reading House Amendments Concurred on Voice Vote	48	0
4/06	3rd Reading Passed as Amended by House	47	0
4/06	Sent to Enrolling		
4/09	Returned from Enrolling		
4/10	Signed by President		
4/10	Signed by Speaker		
4/12	Transmitted to Governor		
4/21	Signed by Governor		
4/21	Chapter Number Assigned		
	Chapter Number 344		
	Effective Date: 10/01/2001 - All Sections		

SB 474 Introduced by Grimes *LC1540 Drafter: B. Campbell*

Revise Laws on Auto and Auto Glass Repair

2/14	Introduced		
2/14	First Reading		
2/14	Referred to Business and Labor		
2/17	Hearing		
2/19	Committee Executive Action--Bill Passed as Amended	9	0
2/19	Committee Report--Bill Passed as Amended		
2/21	2nd Reading Passed on Voice Vote	50	0
2/22	3rd Reading Passed	47	3
	Transmitted to House		
3/03	Referred to Business and Labor		

3/26	Hearing		
3/27	Committee Executive Action--Bill Concurred as Amended	19	0
3/27	Committee Report--Bill Concurred as Amended		
3/30	2nd Reading Concurred	97	0
3/31	3rd Reading Concurred	96	4
	Returned to Senate with Amendments		
4/05	2nd Reading House Amendments Concurred	36	13
4/06	3rd Reading Passed as Amended by House	35	12
4/06	Sent to Enrolling		
4/09	Returned from Enrolling		
4/10	Signed by President		
4/10	Signed by Speaker		
4/12	Transmitted to Governor		
4/21	Signed by Governor		
4/21	Chapter Number Assigned		
	Chapter Number 345		
	Effective Date: 4/21/2001 - All Sections		

SB 475 Introduced by Doherty *LC0098 Drafter: Everts*

Prohibit Unfair Electricity Profits

2/14	Introduced		
2/14	First Reading		
2/14	Referred to Energy and Telecommunications		
2/15	Fiscal Note Requested		
2/17	Hearing		
2/19	Tabled in Committee		
2/21	Taken from Committee; Placed on 2nd Reading	34	12
2/22	Fiscal Note Received		
2/22	Fiscal Note Signed		
2/22	Fiscal Note Printed		
3/29	Missed Deadline for Revenue Bill Transmittal		

SB 476 Introduced by Keenan, et al. *LC0947 Drafter: Fox*

Clarify Nursing Home Certification Requirements; Require Rules

2/15	Introduced		
2/15	First Reading		
2/15	Referred to Judiciary		
2/15	Fiscal Note Requested		
2/16	Hearing		
2/19	Committee Executive Action--Bill Passed	9	0
2/19	Committee Report--Bill Passed		
2/20	Fiscal Note Received		
2/20	Fiscal Note Signed		
2/20	Fiscal Note Printed		
2/20	2nd Reading Passed on Voice Vote	50	0
2/21	3rd Reading Passed	50	0
	Transmitted to House		
3/03	Referred to Human Services		
3/21	Hearing		
3/23	Committee Executive Action--Bill Concurred as Amended	18	0
3/23	Committee Report--Bill Concurred as Amended		
3/30	2nd Reading Concurred	98	1
3/31	3rd Reading Concurred	100	0
	Returned to Senate with Amendments		

3

Senate BILL NO. 474

INTRODUCED BY _____
(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING CERTAIN ACTS OR PRACTICES OF INSURERS WITH RESPECT TO AUTOMOBILE GLASS REPLACEMENT, AUTOMOBILE GLASS REPAIRS, AUTOMOTIVE GLASS PRODUCTS, AND AUTOMOBILE REPAIRS; ALLOWING INSURERS TO INFORM INSURED PERSONS AND CLAIMANTS ABOUT REPAIR OPTIONS AND PROGRAMS AVAILABLE UNDER THE INSURANCE POLICY; PROVIDING THAT AN INSURED PERSON OR CLAIMANT HAS THE RIGHT TO CHOOSE THE BUSINESS OR LOCATION FOR AUTOMOBILE GLASS REPLACEMENT OR REPAIRS, PURCHASE OF AUTOMOBILE GLASS PRODUCTS, OR AUTOMOBILE REPAIRS; REQUIRING THAT THE INSURED PERSON OR CLAIMANT BE INFORMED OF THE RIGHT TO CHOOSE; RESTRICTING THE DISTRIBUTION OF PROPRIETARY PRICING INFORMATION; PROVIDING FOR A GRIEVANCE PROCEDURE; AMENDING SECTIONS 30-14-225 AND 33-18-222, MCA; REPEALING SECTIONS 33-18-221, 33-18-223, 33-18-224, AND 33-18-1006, MCA; PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Prohibited acts or practices of insurers -- right to choose repair business or location -- liability -- proprietary pricing information -- grievances and remedies.** (1) An insurer, including its producers, designated administrators, adjusters, and employees, that issues or renews a policy of insurance in this state covering, in whole or in part, a motor vehicle may not:

(a) require a person insured or a claimant under the policy to use a particular business or location for automobile glass replacement, automobile glass repair services, purchase of automobile glass products, or automobile repair services; or

(b) engage in any act or practice that intimidates, coerces, or threatens an insured person or a claimant or provide an incentive or inducement for an insured person or a claimant to use a particular business or location for automobile glass replacement, automobile glass repair services, purchase of automobile glass products, or automobile repair services.

(2) For the purposes of subsection (1), the following are not acts or practices that intimidate,

coerce, or threaten an insured person or a claimant or that provide an incentive or inducement:

(a) providing an insured person or a claimant with information about particular businesses or locations that provide automobile glass replacement, automobile glass repair services, automobile glass products, or automobile repair services with which the insurer or its designated administrator has established a business relationship;

(b) providing an insured person or a claimant with a list of all established businesses or locations that provide automobile glass replacement, automobile glass repair services, automobile glass products, or automobile repair services, that are reasonably close to the insured person or claimant, and that offer a warranty for the services or products provided by the businesses or locations;

(c) providing an insured person or a claimant with a list of particular businesses or locations that provide automobile glass replacement, automobile glass repair services, automobile glass products, or automobile repair services that are reasonably close to the insured person or claimant. The insurer or its designated administrator may restrict the list to those businesses or locations that meet or have agreed to the insurer's or designated administrator's reasonable standards of quality, service, safety, and price. If the restricted list is provided, the insurer or its designated administrator shall inform the insured person or claimant of the insured person's or claimant's right to use a nonlisted company or location as provided in subsection (3).

(d) providing an insured person or a claimant with information about repair options made available by an insurer or its designated administrator to an insured person or claimant under an insured person's policy;

(e) describing the process by which the claim of an insured person or claimant would be adjusted and paid; or

(f) referring to a warranty issued by the insurer, its designated administrator, or a business or location that provides automobile glass replacement, glass repair services, glass products, or automobile repair services.

(3) The insured person or claimant may use a nonlisted company or location at the insured person's or claimant's sole discretion and subject to the provisions of subsection (4). The insurer or its designated administrator shall promptly pay for the cost of automobile glass replacement, automobile glass repair services, automobile glass products, or automobile repair services provided, less any deductible under the terms of the policy.

(4) This section does not require an insurer or its designated administrator to pay more for automobile glass replacement, automobile glass repair services, automobile glass products, or automobile repair services than the prevailing market price as defined in 33-18-222.

(5) Notwithstanding the provisions of subsections (1) through (4), an insurer or its designated administrator may agree to pay the full cost of automobile glass replacement, automobile glass repairs, automobile glass products, or automobile repairs.

(6) It is unlawful for a business or location that provides automobile glass replacement, automobile glass repair services, automobile glass products, or automobile repair services to charge or agree to charge an insured person or claimant more than an uninsured person for any automobile glass replacement, automobile glass repair services, automobile glass product, or automobile repair services.

(7) An insurer or its designated administrator that contracts with an independent adjuster may not be held liable for the independent adjuster's failure to comply with the terms of this section unless the independent adjuster is clearly acting at the direction of the insurer or its designated administrator.

(8) If the insured person or claimant uses a business or location for automobile glass replacement, automobile glass repair services, automobile glass products, or automobile repair services with which the insurer or its designated administrator does not have an established business relationship under subsection (2)(a) or that is not on a list provided under subsection (2)(b) or (2)(c), the insurer or its designated administrator may not be held liable for any services performed or products provided by the business or location that the insured person or claimant chooses to use.

(9) An insurer or its designated administrator that through the processing of repair bills obtains proprietary pricing information about an insurer or a business or location that provides automobile glass replacement, automobile glass repair services, automobile glass products, or automobile repair services may not disclose the proprietary pricing information obtained to any other insurer, designated administrator, or business or location that provides automobile glass replacement, automobile glass repair services, automobile glass products, or automobile repair services, except as is reasonably necessary to process a claim.

(10) In the event of any dispute concerning a provision of this section, the aggrieved person may submit a complaint to the commissioner for a determination in accordance with the provisions of Title 33, chapter 1, part 7.

Section 2. Section 30-14-225, MCA, is amended to read:

"30-14-225. Prohibited practices -- advertising allowed -- violations. (1) A person engaged in ~~automobile repair or~~ the sale, repair, or replacement of automobile glass or in the business of automobile repair may not:

(a) advertise, promise to provide, or offer any coupon, credit, or rebate to pay all or part of an insurance deductible under a casualty or property insurance policy, including any incentive to purchase automobile glass or automobile repairs offered to the customer in which the customer, in conjunction with the purchase of automobile glass or automobile repairs, receives cash or other valuable consideration; or

(b) pay a sum or incentive to an individual or entity for directing automobile repair services or automobile glass replacement or repair or the purchase of a glass product.

(2) A person or association of persons engaged in automobile repair services or the sale, repair, or replacement of automobile glass may advertise services as to quality, service, and safety.

~~(3) A glass broker, as defined in 33-18-223, or an automobile repair business may not manage, handle, or arrange automobile glass replacement or glass repair work or automobile repair services for which the glass broker or the automobile repair business retains a percentage of the claim.~~

~~(4) Except as provided in 33-18-224, in a communication between an insurer and an insured regarding an insurance claim, the insurer may not:~~

~~(a) require, suggest, or encourage the use of the name of a particular automobile repair business or location; or~~

~~(b) mention or provide the name of a particular automobile repair business or location.~~

~~(5)~~(3) (a) A violation of subsection (1)(a) is an unfair and deceptive act under 30-14-103.

(b) A person engaged in the sale, repair, or replacement of automobile glass or in the business of automobile repair who violates subsection (1)(a) is also subject to the insurance fraud protection provisions of Title 33, chapter 1, part 12."

Section 3. Section 33-18-222, MCA, is amended to read:

"33-18-222. Prevailing market price. For purposes of ~~33-18-221, 33-18-223, and 33-18-224~~ [section 1], "prevailing market price" means the lowest competitive and generally accepted market price in a local area. The prevailing market price may not be less than cost as provided in 30-14-209."

NEW SECTION. **Section 4. Repealer.** Sections 33-18-221, 33-18-223, 33-18-224, and 33-18-1006, MCA, are repealed.

NEW SECTION. **Section 5. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 33, chapter 18, part 2, and the provisions of Title 33, chapter 18, part 2, apply to [section 1].

NEW SECTION. **Section 6. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 7. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 8. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to January 1, 2000.

- END -

MINUTES

MONTANA SENATE
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN MIKE TAYLOR**, on February 17, 2001 at 9:00 A.M., in Room 422 Capitol.

ROLL CALL

Members Present:
Sen. Mike Taylor, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Edward Butcher (R)
Sen. Vicki Cocchiarella (D)
Sen. Sam Kitzenberg (R)
Sen. Glenn Roush (D)
Sen. Don Ryan (D)

Members Excused: Sen. Dale Berry (R)
Sen. Dale Mahlum (R)

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Kyanne Kelly, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted: SB 469, 2/14/2001; SB 474, 2/14/2001; SB 441, 2/14/2001; SB480, 2/14/2001
Executive Action: SB 469; SB 349; SB 445

Motion/Vote: **SEN. RYAN** moved that **SB 349 DO PASS. Motion carried unanimously.**

HEARING ON SB 474

Sponsor: **SENATOR DUANE GRIMES, SD 20, CLANCY**

Proponents: **Greg Van Horssen, State Farm**
Jacqueline Lenmark, American Insurance Association
John Metropoulos, Farmers Insurance Group
Jan VanRiper, Insurance Commissioners Office
Tom Daubert, Montana Collision & Repair Specialist

Opponents: None

Opening Statement by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 10.8}

SENATOR DUANE GRIMES, SD 20, CLANCY, said this bill would let the law go back to it's pre-1999 status, and that he would let the proponents explain it more throughly.

Proponents' Testimony:

Greg Van Horssen, State Farm, said this bill was meant to fix some problems created by the 1999 bill, HB 506. He spoke in depth about the problems and solutions. **EXHIBIT(1)**

Jacqueline Lenmark, American Insurance Association, said the law that is represented in HB 506 has never gone into effect. It went into litigation before it ever went into effect. This bill would essentially reverse HB 506.

John Metropoulos, Farmers Insurance Group, said he wholehearted supports this repealer.

Jan Van Riper, Insurance Commissioners Office, said they support the amendments that repeal HB 506, but do not support the bill. Ever since HB 506 passed they went into court and it has been in litigation ever since.

TOM DAUBERT, MONTANA COLLISION & REPAIR SPECIALIST, said he concurs with the other proponents . He supports the amendments and not the bill itself.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SENATOR MIKE SPRAGUE asked if the Collision & Repair members are aware of this bill.

Tom Daubert, said yes they are aware of it and have read it.

Closing by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 29}

SENATOR DUANE GRIMES, SD 20, CLANCY, closed without comment.

EXECUTIVE ACTION ON SB 445

Motion: **SEN. TAYLOR** moved that **AMENDMENTS TO SB 445 BE ADOPTED.**

Discussion: Mark Simonich from the Department of Commerce spoke in detail about the amendments. **EXHIBIT(2)** **EXHIBIT(3)**

SENATOR GLENN ROUSH asked **Andy Poole** about moving the Board of Horse Racing to the Department of Justice.

Andy Poole said Horse Racing is a regulatory activity and thus needed to be moved out of Commerce.

SENATOR MIKE SPRAGUE asked where the Banking Board would go. **Andy Poole** said the Banking Board was going to Administration.

SENATOR VICKI COCCHIARELLA said her concern was with the Department of Consumer Affairs being moved to the Department of Justice. She said that she was concerned the staffing levels would not be kept up at the current rate. **CHAIRMAN TAYLOR** said the jobs and departments would move, and the people and money would move with them.

SENATOR DON RYAN said he would like more time to study this bill before he votes on it. **SENATOR ROUSH** said that this bill will go through and things that are wrong with it will be fixed in the next session
SENATOR SAM KITZENBERG said the Department of Commerce is underfunded and that is one of the problems. He said he would like to see if there is a reduction of employees and greater efficiency.

MONTANA SENATE
2001 LEGISLATURE
BUSINESS AND LABOR COMMITTEE
ROLL CALL

DATE 2-17-2001

NAME	PRESENT	ABSENT	EXCUSED
SENATOR DALE BERRY			✓
SENATOR ED BUTCHER	✓		
SENATOR VICKI COCCHIARELLA	✓		
SENATOR SAM KITZENBERG	✓		
SENATOR DALE MAHLUM			✓
SENATOR GLENN ROUSH	✓		
SENATOR DON RYAN	✓		
SENATOR MIKE SPRAGUE, VICE CHAIR	✓		
SENATOR MIKE TAYLOR, CHAIR	✓		

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 1
DATE 2-17-2001
BILL NO. SB 474

Amendments to Senate Bill 474
Introduced Bill
Requested by Senator Duane Grimes
Prepared by Jacqueline T. Lenmark
February 16, 2001

1. Title, lines 4 through 15.
Following: "AN ACT"
Strike: the remainder of line 4 through "MCA" on line 15
Insert: " GENERALLY REVISING THE INSURANCE UNFAIR TRADE PRACTICES ACT WITH RESPECT TO AUTOMOBILE GLASS REPLACEMENT, AUTOMOBILE GLASS REPAIR, AUTOMOBILE GLASS PRODUCTS, AND AUTOMOBILE BODY REPAIR; AMENDING SECTIONS 30-14-225, 33-18-221, 33-18-222, 33-18-223, 33-18-224, AND 33-18-1006, MCA

2. Page 1, line 19 through page 5, line 6
Strike: Sections 1 through 5 in their entirety
Insert: "Section 1. Section 30-14-225, MCA, is amended to read:

"**30-14-225. Prohibited practices -- advertising allowed.** (1) A person engaged in ~~automobile repair or~~ the sale, repair, or replacement of automobile glass or in the business of automobile repair may not:

(a) advertise, promise to provide, or offer any coupon, credit, or rebate to pay all or part of an insurance deductible under a casualty or property insurance policy, including any incentive to purchase automobile glass or automobile repairs offered to the customer in which the customer, in conjunction with the purchase of automobile glass or automobile repairs, receives cash or other valuable consideration; or

(b) pay a sum or incentive to an individual or entity for directing ~~automobile repair services or~~ glass replacement or repair or the purchase of a glass product.

(2) A person or association of persons engaged in ~~automobile repair services or~~ the sale, repair, or replacement of automobile glass may advertise services as to quality, service, and safety.

(3) A glass broker, as defined in 33-18-223, ~~or an automobile repair business~~ may not manage, handle, or arrange automobile glass replacement or glass repair work ~~or automobile repair services~~ for which the glass broker ~~or the automobile repair business~~ retains a percentage of the claim.

~~(4) Except as provided in 33-18-224, in a communication between an insurer and an insured regarding an insurance claim, the insurer may not:~~

~~(a) require, suggest, or encourage the use of the name of a particular automobile repair business or location; or~~

~~(b) mention or provide the name of a particular automobile repair business or location.~~

~~(5)~~(4) (a) A violation of subsection (1)(a) is an unfair and deceptive act under 30-14-103.

(b) A person engaged in the sale, repair, or replacement of automobile glass or in the business of automobile repair who violates subsection (1)(a) is also subject to the insurance fraud protection provisions of Title 33, chapter 1, part 12."

Section 2. Section 33-18-221, MCA, is amended to read:

"**33-18-221. Designation of specific repair shops ~~and discrimination against insured customers~~ prohibited -- lists allowed.** (1) An insurance company, including its producers and adjusters, that issues or renews a policy of insurance in this state covering, in whole or part, a motor vehicle may not:

(a) require that a person insured under the policy use a particular company or location for providing automobile glass replacement, glass repair services, or glass products insured in whole or part by the policy; or

(b) engage in any act or practice of intimidation, coercion, or threat for or against an insured person to use a particular company or location to provide automobile glass replacement, glass repair services, or glass products insured in whole or in part under the terms of an insurance policy.

(2) (a) An insurance company may provide an insured with a list that includes the names of particular companies or locations providing automobile glass replacement, glass repair services, or glass products if some of the listed companies or locations are reasonably close and convenient to the insured. The insurance company may restrict the list to those companies or locations that meet reasonable standards of quality, service, and safety.

(b) The insured may use a nonlisted company or location at the insured's sole discretion, and subject to the provisions of subsections (2)(c) and (3), the insurance company will fully and promptly pay for the cost of automobile glass replacement, glass repair services, or glass products provided, less any deductible under the terms of the policy.

(c) If the insured does not use a list as provided in subsection (2)(a), the insurer may require the insured to obtain not more than three competitive bids to establish the cost of automobile glass replacement, glass repair services, or glass products provided.

(3) This section does not require an insurer to pay more for automobile glass replacement, glass repair services, or glass products than the <u>lowest</u> prevailing market price as defined in 33-18-222.

(4) Notwithstanding the provisions of subsections (1) through (3), an insurance company may agree to pay the full cost of glass replacement or repair.

~~(5) It is unlawful for a company or location that provides automobile glass replacement services to charge or agree to charge an insured customer more than an uninsured customer for~~

~~any automobile glass replacement service.~~"

Section 3. Section 33-18-222, MCA, is amended to read:

"**33-18-222. ~~Prevailing~~ Lowest prevailing market price.** For purposes of 33-18-221, and 33-18-223, ~~and 33-18-224,~~ "lowest prevailing market price" means the ~~lowest competitive and generally accepted~~ lowest market price in a local area. The lowest prevailing market price may not be less than cost as provided in 30-14-209."

Section 4. Section 33-18-223, MCA, is amended to read:

"**33-18-223. Prohibited activities -- glass broker defined.** (1) It is unlawful for an insurance company, individually or with others, to directly or indirectly:

(a) establish an agreement with any person to act as a glass broker for the insurance company under which the glass broker sets a price that must be met by a glass repair shop as a condition for doing glass replacement or glass repair work for the insurance company;

(b) establish an agreement with a glass broker that requires a glass repair shop to bill through that glass broker as a condition of doing glass replacement or glass repair work; or

(c) establish a price that must be met by a glass repair shop as a condition for doing glass replacement or glass repair work that is below the lowest prevailing market price as provided in 33-18-222~~;~~

~~(d) establish an agreement for the processing of claims or bills with a glass broker or with an entity that has a financial interest in an entity in this state that installs or provides glass for installation; or~~

~~(e) share information obtained through the processing of glass replacement or glass repair bills with an entity that is involved directly or indirectly in any aspect of the glass manufacturing, replacement, or repair business~~.

(2) As used in this section, "glass broker" means an automobile glass company that acts as a third-party agent for the insurer whenever the glass broker enters into agreements with other automobile glass dealers to perform glass replacement or glass repair work ~~or that installs or manufactures glass or provides glass for installation~~."

Section 5. Section 33-18-224, MCA, is amended to read:

"**33-18-224. Designation of specific automobile body repair shops prohibited ~~-- certain requirements -- allowances~~.** (1) An insurance company, including its ~~employees~~ producers and adjusters, that issues or renews a policy of insurance in this state covering, in whole or in part, a motor vehicle may not:

(a) require ~~or encourage~~ that a person insured ~~or a claimant~~ under the policy ~~to~~ use a particular automobile repair business or location; or

(b) engage in any act or practice that intimidates, coerces, or threatens an insured person ~~or a claimant~~ or provides an incentive or inducement for an insured person ~~or a claimant~~ to use a particular automobile repair business or location~~;~~

~~(c) except as provided in subsection (2):~~

~~(i) suggest the use of a particular automobile repair business or location;~~

~~(ii) mention or provide the name of a particular automobile repair business or location;~~

~~(iii) direct an insured or claimant to an automobile repair business or location or entity in Montana that engages in or has a financial interest in the processing of a claim or bill unless the business or location has been selected by the insured or claimant; or~~

~~(iv) share information obtained through the processing of an automobile repair bill with an entity that is involved directly or indirectly in any aspect of the automobile repair business.;~~ or

~~(d) suggest or direct its appointed producers to suggest, mention, provide the name of, or encourage the use of a particular automobile repair business or location to an insured person or a claimant.~~

~~(2) (a) Subsections (1)(a), (1)(b), and (1)(c)(iii) apply to all insurance producers, and~~

~~(b) subsections (1)(c)(i) and (1)(c)(ii) apply only to insurance producers that:~~

~~(i) write automobile insurance for primarily one insurer; or~~

~~(ii) are contractually obligated to use one automobile insurer before using other insurers.~~

~~(3)~~(2) ~~An insurer may~~ For the purposes of this section, an incentive or inducement does not include:

(a) ~~provide~~ providing an insured person or a ~~claimant~~ customer with a list of all established automobile repair businesses or locations reasonably close to the insured person or ~~claimant~~ customer that offer a warranty for the automobile repair services provided by the businesses or locations; ~~or~~

(b) ~~provide~~ providing an insured person or a ~~claimant~~ customer with a list of particular ~~automobile repair businesses or locations that are reasonably close to the insured person or claimant that meet~~ body shops meeting reasonable standards of quality, service, and safety when the list is requested by the insured person or customer; or

(c) referring to a warranty issued by an automobile repair business or location.

~~(4) If an insurer elects to provide an insured person or a claimant with the list described in subsection (3)(b), the insurer shall:~~

~~(a) upon the request of any automobile repair business or location, make available the reasonable standards of quality, service, and safety that are to be met by automobile repair~~

~~businesses or locations in order to be placed on the list. The standards may not exclude a business or location from being on the list solely on the basis of the size or location of the automobile repair business, the number of persons employed in the business, or pricing other than what is fair or reasonable in the market area of the automobile repair business or location.~~

~~(b) include on the list any automobile repair business or location that meets the standards and indicates in writing to the insurer that the business or location desires to be placed on the list.~~

~~(5) In the event of any dispute, the business or location may submit a complaint to the commissioner for a determination in accordance with the provisions of Title 33, chapter 1, part 7.~~

~~(6) In distributing the list provided for in subsection (3) to an insured or a claimant or in any discussion of the list with an insured or a claimant, an insurer may not express a preference or mention an advantage or inducement for the insured or the claimant to use a particular automobile repair facility or location on the list.~~

~~(7)~~ (3) The insured may use a business or location at the insured's ~~or claimant's~~ sole discretion. ~~The~~ , and the insurance company shall pay for the reasonable and necessary cost of the automobile body repair services for covered damages, less any deductible under the terms of the policy. This section does not require an insurer to pay more for automobile body repair services than the lowest prevailing market price, as defined in 33-18-222. ~~An insurer shall inform the insured person or claimant of the insured person's or claimant's rights under this subsection.~~

~~(8)~~ (4) If the insured person ~~or claimant~~ uses an automobile repair business or location not on a list provided under subsection ~~(3)(a) or (3)(b)~~ (2)(a) or (2)(b), the insurance company may not be held liable for any repair work performed by the automobile repair business or location that the insured person chooses to use.

~~(9)~~ (5) It is unlawful for an automobile repair business or location to charge or agree to charge an insured customer more than an uninsured customer for any automobile repair service.

~~(10)~~ (6) An insurance company that contracts with an independent adjuster may not be held liable for the independent adjuster's failure to comply with the terms of this section ~~unless the independent adjuster is clearly acting at the direction of the insurance company~~.

~~(11)~~ (7) For purposes of this section, "automobile repair business or location" does not include a business or location that exclusively provides automobile glass replacement, glass repair services, or glass products."

Section 6. Section 33-18-1006, MCA, is amended to read:

"33-18-1006. Desist orders for prohibited practices--

~~**court injunctions.**~~ ~~(1)~~ Violations of 33-18-221 through ~~33-18-224~~ 33-18-223 are subject to cease and desist orders of the commissioner issued under 33-18-1004.

~~(2) The commissioner, the attorney general, or a county attorney of the county where a violation of 33-18-221 through 33-18-224 is alleged may bring an action to enjoin any further violation of 33-18-221 through 33-18-224 in the first judicial district or in the county where the violation is alleged to have occurred.~~""

Renumber subsequent sections.

3. Page 5, line 16
Following: "to"
Strike: "January 1, 2000"
Insert: "October 1, 1999"

- END -

MINUTES

MONTANA SENATE
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN MIKE TAYLOR**, on February 19, 2001 at 8:00 A.M., in Room 422 Capitol.

ROLL CALL

Members Present:

Sen. Mike Taylor, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Edward Butcher (R)
Sen. Vicki Cocchiarella (D)
Sen. Sam Kitzenberg (R)
Sen. Dale Mahlum (R)
Sen. Glenn Roush (D)
Sen. Don Ryan (D)

Members Excused: Sen. Dale Berry (R)

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Kyanne Kelly, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 401, 2/17/2001; SB 428, 2/17/2001; SB 432, 2/17/2001; SB 465, 2/17/2001; SB 415, 2/17/2001; SB 420, 2/17/2001

Executive Action: SB 450; ~~SB 480~~; SB 367; SB 441; SB 474; SB 415; SB 308; SB 428; SB 414; SB 432; SB 438; SB 401; SB 86

Vote: **Motion carried 7-2 with Ryan and Taylor voting no.**

EXECUTIVE ACTION ON SB 441

Motion/Vote: **SEN. COCCHIARELLA** moved that **SB 441 BE TABLED. Motion failed 5-4 with Cocchiarella, Mahlum, Roush, and Ryan voting aye.**

Motion: **SEN. TAYLOR** moved that **SB 441 DO PASS.**

Discussion: **SENATOR COCCHIARELLA** said this is a horrible bill. She said this would essentially be a pay cut for University employees. We would need to put on the front page that this committee just gave them a pay cut if this bill was passed. **CHAIRMAN TAYLOR** said he thinks this spreads the costs to two groups that are not currently sharing in the cost. **Chuck Butler from Blue Cross/Blue Shield** came forward for clarification. He said that it would spread the cost to people who are not benefitting from it.

Vote: **Motion failed 4-5 with Berry, Butcher, Sprague, and Taylor voting aye.**

Motion/Vote: **SEN. COCCHIARELLA** moved that **SB 441 BE TABLED. Motion carried 5-4 with Berry, Butcher, Sprague, and Taylor voting no.**

EXECUTIVE ACTION ON SB 474

Motion: **SEN. SPRAGUE** moved that **AMENDMENTS TO SB 474 BE ADOPTED.**

Discussion: Bart Campbell explained the amendments.

Vote: **Motion carried unanimously.**

Motion/Vote: **SEN. SPRAGUE** moved that **SB 474 DO PASS AS AMENDED. Motion carried unanimously.**

EXECUTIVE ACTION ON SB 415

Motion/Vote: **SEN. SPRAGUE** moved that **SB 415 BE TABLED. Motion carried 7-2 with Ryan and Taylor voting no.**

Committee adjourned at 12:00, to reconvene at 3:00

Motion/Vote: **SEN. SPRAGUE** moved that **SB 474 DO PASS AS AMENDED. Motion carried unanimously.**

EXECUTIVE ACTION ON SB 415

Motion/Vote: **SEN. SPRAGUE** moved that **SB 415 BE TABLED. Motion carried 7-2 with Ryan and Taylor voting no.**

Committee adjourned at 12:00, to reconvene at 3:00

EXECUTIVE ACTION ON SB 308

Motion/Vote: **SEN. BUTCHER** moved that **AMENDMENTS TO SB 308 BE ADOPTED. Motion carried unanimously.**

Motion: **SEN. RYAN** moved that **SB 308 DO PASS AS AMENDED.**

Discussion: **SENATOR RYAN** said we need to have some safeguards because of the things going on in the state right now. He said that this would help people in fixed income or no income situation. **SENATOR BUTCHER** said people should get off their butt and get a job.

Vote: **Motion failed 2-5 with Kitzenberg and Ryan voting aye.**

Motion/Vote: **SEN. TAYLOR** moved that **SB 308 BE TABLED. Motion carried 5-4 with Cocchiarella, Kitzenberg, Roush, and Ryan voting no.**

EXECUTIVE ACTION ON SB 428

Motion: **SEN. TAYLOR** moved that **AMENDMENTS TO SB 428 BE ADOPTED.**

Discussion: **SENATOR TAYLOR** said he thinks the jump from 60% to 66% is too great to start with. He provided an amendment that would bring it from 66% to 63%.

Vote: **Motion carried 5-1 with Ryan voting no.**

Motion/Vote: **SEN. TAYLOR** moved that **SB 428 DO PASS AS AMENDED. Motion carried unanimously.**

MONTANA SENATE
2001 LEGISLATURE
BUSINESS AND LABOR COMMITTEE
ROLL CALL

DATE Feb 19, 2001

NAME	PRESENT	ABSENT	EXCUSED
SENATOR DALE BERRY			✓
SENATOR ED BUTCHER	✓		
SENATOR VICKI COCCHIARELLA	✓		
SENATOR SAM KITZENBERG	✓		
SENATOR DALE MAHLUM	✓		
SENATOR GLENN ROUSH	✓		
SENATOR DON RYAN	✓		
SENATOR MIKE SPRAGUE, VICE CHAIR	✓		
SENATOR MIKE TAYLOR, CHAIR	✓		

MONTANA SENATE
2001 LEGISLATURE
BUSINESS AND LABOR COMMITTEE
ROLL CALL VOTE

DATE 2-19-2001 BILL NO. SB474 NUMBER 8

MOTION: Sen Sprague moves amendment Be Adopted 47401

NAME	AYE	NO
SENATOR DALE BERRY		
SENATOR ED BUTCHER		
SENATOR VICKI COCCHIARELLA		
SENATOR SAM KITZENBERG		
SENATOR DALE MAHLUM		
SENATOR GLENN ROUSH		
SENATOR DON RYAN		
SENATOR MIKE SPRAGUE, VICE CHAIR		
SENATOR MIKE TAYLOR, CHAIR		

MONTANA SENATE
2001 LEGISLATURE
BUSINESS AND LABOR COMMITTEE
ROLL CALL VOTE

DATE 2-19-2001 BILL NO. SB474 NUMBER 9

MOTION: Sen Sprague Moves DO PASS As Amended

NAME	AYE	NO
SENATOR DALE BERRY		
SENATOR ED BUTCHER		
SENATOR VICKI COCCHIARELLA		
SENATOR SAM KITZENBERG		
SENATOR DALE MAHLUM		
SENATOR GLENN ROUSH		
SENATOR DON RYAN		
SENATOR MIKE SPRAGUE, VICE CHAIR		
SENATOR MIKE TAYLOR, CHAIR		

BUSINESS & LABOR
COMMITTEE PROXY

Date: 2-19-01

I request to be excused from the 2-19-01 (date of meeting) committee meeting because of other commitments. I desire to leave my proxy vote with Senator Dale Berry.

Indicate *Bill Number* on the space provided below. If there are amendments, list them by name and number under the bill.

Senate Bill/Amendment

450 — Y

480 — Y

369 — Y

~~402~~ 441 → Y — TABLE BILL N — Failed

474 — Y

415 — Y — TO TABLE BILL — 7-2

As Amended

By checking the blank below I am giving Senator Nelson my proxy to vote on amendments that are brought up and voted on during a meeting. ____

Signed: Dale Berry

All proxy forms must be turned into Vice Chair Mike Sprague prior to the meeting you will be absent.

Amendments to Senate Bill No. 474
1st Reading Copy

Requested by Senator Duane Grimes

For the Senate Business and Labor Committee

Prepared by Bartley Campbell
February 19, 2001 (7:02AM)

1. Title, lines 4 through 12.
Strike: "PROHIBITING" on line 4 through "PROCEDURE" on line 12
Insert: "GENERALLY REVISING THE INSURANCE UNFAIR TRADE PRACTICES LAW WITH RESPECT TO AUTOMOBILE GLASS REPLACEMENT, AUTOMOBILE GLASS REPAIR, AUTOMOBILE GLASS PRODUCTS, AND AUTOMOBILE BODY REPAIR"

2. Title, line 13.
Strike: "AND 33-18-222, MCA; REPEALING SECTIONS 33-18-221, 33-18-223, 33-18-224"
Insert: "33-18-221, 33-18-222, 33-18-223, 33-18-224,"

3. Page 1, line 19 through page 5, line 6.
Strike: sections 1 through 5 in their entirety
Insert: **"Section 1.** Section 30-14-225, MCA, is amended to read:

"30-14-225. Prohibited practices -- advertising allowed -- violations. (1) A person engaged in ~~automobile repair or~~ the sale, repair, or replacement of automobile glass ~~or in the business of automobile repair~~ may not:

(a) advertise, promise to provide, or offer any coupon, credit, or rebate to pay all or part of an insurance deductible under a casualty or property insurance policy, including any incentive to purchase automobile glass ~~or automobile repairs~~ offered to the customer in which the customer, in conjunction with the purchase of automobile glass ~~or automobile repairs~~, receives cash or other valuable consideration; or

(b) pay a sum or incentive to an individual or entity for directing ~~automobile repair services or~~ glass replacement or repair or the purchase of a glass product.

(2) A person or association of persons engaged in ~~automobile repair services or~~ the sale, repair, or replacement of automobile glass may advertise services as to quality, service, and safety.

(3) A glass broker, as defined in 33-18-223, ~~or an automobile repair business~~ may not manage, handle, or arrange automobile glass replacement or glass repair work ~~or automobile~~

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~~repair services~~ for which the glass broker ~~or the automobile repair business~~ retains a percentage of the claim.

~~(4) Except as provided in 33-18-224, in a communication between an insurer and an insured regarding an insurance claim, the insurer may not:~~

~~(a) require, suggest, or encourage the use of the name of a particular automobile repair business or location; or~~

~~(b) mention or provide the name of a particular automobile repair business or location.~~

~~(5)~~ (4) (a) A violation of subsection (1)(a) is an unfair and deceptive act under 30-14-103.

(b) A person engaged in the sale, repair, or replacement of automobile glass ~~or in the business of automobile repair~~ who violates subsection (1)(a) is also subject to the insurance fraud protection provisions of Title 33, chapter 1, part 12."

{*Internal References to 30-14-225: None.*}"

Insert: "Section 2. Section 33-18-221, MCA, is amended to read:

"33-18-221. Designation of specific repair shops ~~and discrimination against insured customers~~ prohibited -- lists allowed. (1) An insurance company, including its producers and adjusters, that issues or renews a policy of insurance in this state covering, in whole or part, a motor vehicle may not:

(a) require that a person insured under the policy use a particular company or location for providing automobile glass replacement, glass repair services, or glass products insured in whole or part by the policy; or

(b) engage in any act or practice of intimidation, coercion, or threat for or against an insured person to use a particular company or location to provide automobile glass replacement, glass repair services, or glass products insured, in whole or in part, under the terms of an insurance policy.

(2) (a) An insurance company may provide an insured with a list that includes the names of particular companies or locations providing automobile glass replacement, glass repair services, or glass products if some of the listed companies or locations are reasonably close and convenient to the insured. The insurance company may restrict the list to those companies or locations that meet reasonable standards of quality, service, and safety.

(b) The insured may use a nonlisted company or location at the insured's sole discretion, and subject to the provisions of subsections (2)(c) and (3), the insurance company will fully and promptly pay for the cost of automobile glass replacement, glass repair services, or glass products provided, less any deductible under the terms of the policy.

(c) If the insured does not use a list as provided in subsection (2)(a), the insurer may require the insured to obtain not more than three competitive bids to establish the cost of automobile glass replacement, glass repair services, or glass

products provided.

(3) This section does not require an insurer to pay more for automobile glass replacement, glass repair services, or glass products than the lowest prevailing market price as defined in 33-18-222.

(4) Notwithstanding the provisions of subsections (1) through (3), an insurance company may agree to pay the full cost of glass replacement or repair.

~~(5) It is unlawful for a company or location that provides automobile glass replacement services to charge or agree to charge an insured customer more than an uninsured customer for any automobile glass replacement service.~~"

{*Internal References to 33-18-221:*
33-18-222x *33-18-1006* x* *33-18-1006* x* *33-18-1006*x*}"

Insert: "Section 3. Section 33-18-222, MCA, is amended to read:

"33-18-222. ~~Prevailing~~ Lowest prevailing market price. For purposes of 33-18-221, and 33-18-223, ~~and 33-18-224, "prevailing market price"~~ "lowest prevailing market price" means the lowest ~~competitive and generally accepted~~ market price in a local area. The prevailing market price may not be less than cost as provided in 30-14-209."

{*Internal References to 33-18-222:*
33-18-221 x *33-18-223 x* *33-18-224x* *33-18-1006*x*
*33-18-1006*x* *33-18-1006*x*}"

Insert: "Section 4. Section 33-18-223, MCA, is amended to read:

"33-18-223. Prohibited activities -- glass broker defined. (1) It is unlawful for an insurance company, individually or with others, to directly or indirectly:

(a) establish an agreement with any person to act as a glass broker for the insurance company under which the glass broker sets a price that must be met by a glass repair shop as a condition for doing glass replacement or glass repair work for the insurance company;

(b) establish an agreement with a glass broker that requires a glass repair shop to bill through that glass broker as a condition of doing glass replacement or glass repair work; or

(c) establish a price that must be met by a glass repair shop as a condition for doing glass replacement or glass repair work that is below the prevailing market price as provided in 33-18-222~~;~~.

~~(d) establish an agreement for the processing of claims or bills with a glass broker or with an entity that has a financial interest in an entity in this state that installs or provides glass for installation; or~~

~~(e) share information obtained through the processing of glass replacement or glass repair bills with an entity that is involved directly or indirectly in any aspect of the glass manufacturing, replacement, or repair business.~~

(2) As used in this section, "glass broker" means an automobile glass company that acts as a third-party agent for the insurer whenever the glass broker enters into agreements with other automobile glass dealers to perform glass replacement or glass repair work ~~or that installs or manufactures glass or provides glass for installation~~."

{*Internal References to 33-18-223:*
30-14-225 x 33-18-222 x 33-18-1006 x 33-18-1006*x*
*33-18-1006*x*}"

Insert: "Section 5. Section 33-18-224, MCA, is amended to read:

"33-18-224. Designation of specific automobile body repair shops prohibited ~~-- certain requirements -- allowances~~. (1) An insurance company, including its ~~employees~~ producers and adjusters, that issues or renews a policy of insurance in this state covering, in whole or in part, a motor vehicle may not:

(a) require ~~or encourage~~ that a person insured ~~or a claimant~~ under the policy ~~to~~ use a particular automobile body repair business or location; or

(b) engage in any act or practice that intimidates, coerces, or threatens an insured person ~~or a claimant~~ or that provides an incentive or inducement for an insured person ~~or a claimant~~ to use a particular automobile body repair business or location~~;~~.

~~(c) except as provided in subsection (2):~~

~~(i) suggest the use of a particular automobile repair business or location;~~

~~(ii) mention or provide the name of a particular automobile repair business or location;~~

~~(iii) direct an insured or claimant to an automobile repair business or location or entity in Montana that engages in or has a financial interest in the processing of a claim or bill unless the business or location has been selected by the insured or claimant; or~~

~~(iv) share information obtained through the processing of an automobile repair bill with an entity that is involved directly or indirectly in any aspect of the automobile repair business; or~~

~~(d) suggest or direct its appointed producers to suggest, mention, provide the name of, or encourage the use of a particular automobile repair business or location to an insured person or a claimant.~~

~~(2) (a) Subsections (1)(a), (1)(b), and (1)(c)(iii) apply to all insurance producers; and~~

~~(b) subsections (1)(c)(i) and (1)(c)(ii) apply only to insurance producers that:~~

~~(i) write automobile insurance for primarily one insurer; or~~

~~(ii) are contractually obligated to use one automobile insurer before using other insurers.~~

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~~(3)~~ (2) ~~An insurer may~~ For the purposes of this section, an incentive or inducement does not include:

(a) ~~provide~~ providing an insured person or a ~~claimant~~ customer with a list of all established automobile body repair businesses or locations reasonably close to the insured person or ~~claimant~~ customer that offer a warranty for the automobile body repair services provided by the businesses or locations; ~~or~~

(b) ~~provide~~ providing an insured person or a ~~claimant~~ customer with a list of particular ~~automobile repair businesses or locations that are reasonably close to the insured person or claimant that meet~~ body repair shops meeting reasonable standards of quality, service, and safety when the list is requested by the insured person or customer; or

(c) referring to a warranty issued by an automobile body repair business or location.

~~(4) If an insurer elects to provide an insured person or a claimant with the list described in subsection (3)(b), the insurer shall:~~

~~(a) upon the request of any automobile repair business or location, make available the reasonable standards of quality, service, and safety that are to be met by automobile repair businesses or locations in order to be placed on the list. The standards may not exclude a business or location from being on the list solely on the basis of the size or location of the automobile repair business, the number of persons employed in the business, or pricing other than what is fair or reasonable in the market area of the automobile repair business or location.~~

~~(b) include on the list any automobile repair business or location that meets the standards and indicates in writing to the insurer that the business or location desires to be placed on the list.~~

~~(5) In the event of any dispute, the business or location may submit a complaint to the commissioner for a determination in accordance with the provisions of Title 33, chapter 1, part 7.~~

~~(6) In distributing the list provided for in subsection (3) to an insured or a claimant or in any discussion of the list with an insured or a claimant, an insurer may not express a preference or mention an advantage or inducement for the insured or the claimant to use a particular automobile repair facility or location on the list.~~

~~(7)~~ (3) The insured may use a business or location at the insured's ~~or claimant's~~ sole discretion. ~~The~~, and the insurance company shall pay for the reasonable and necessary cost of the automobile body repair services for covered damages, less any deductible under the terms of the policy. This section does not require an insurer to pay more for automobile body repair services than the lowest prevailing market price, as defined in 33-18-222. ~~An insurer shall inform the insured person or claimant~~

~~of the insured person's or claimant's rights under this subsection.~~

~~(8)~~ (4) If the insured person ~~or claimant~~ uses an automobile body repair business or location not on a list provided under subsection ~~(3)(a) or (3)(b)~~ (2)(a) or (2)(b), the insurance company may not be held liable for any repair work performed by the automobile body repair business or location that the insured person chooses to use.

~~(9)~~ (5) It is unlawful for an automobile body repair business or location to charge or agree to charge an insured customer more than an uninsured customer for any automobile body repair service.

~~(10)~~ (6) An insurance company that contracts with an independent adjuster may not be held liable for the independent adjuster's failure to comply with the terms of this section ~~unless the independent adjuster is clearly acting at the direction of the insurance company~~.

~~(11)~~ (7) For purposes of this section, "automobile body repair business or location" does not include a business or location that exclusively provides automobile glass replacement, glass repair services, or glass products."

{*Internal References to 33-18-224:*
30-14-225 x 33-18-222 x 33-18-1006 x 33-18-1006 x 33-18-1006x }"

Insert: "Section 6. Section 33-18-1006, MCA, is amended to read:

"33-18-1006. Desist orders for prohibited practices ~~-- court injunctions~~. ~~(1)~~ Violations of 33-18-221 through ~~33-18-224~~ 33-18-223 are subject to cease and desist orders of the commissioner issued under 33-18-1004.

~~(2) The commissioner, the attorney general, or a county attorney of the county where a violation of 33-18-221 through 33-18-224 is alleged may bring an action to enjoin any further violation of 33-18-221 through 33-18-224 in the first judicial district or in the county where the violation is alleged to have occurred.~~"

{*Internal References to 33-18-1006: None.*}"

Renumber: subsequent sections

4. Page 5, line 16.
Strike: "January 1, 2000"
Insert: "October 1, 1999"

- END -

APPROVED BY COMM ON
BUSINESS & LABOR

SENATE BILL NO. 474

INTRODUCED BY D. GRIMES

A BILL FOR AN ACT ENTITLED: "AN ACT ~~PROHIBITING CERTAIN ACTS OR PRACTICES OF INSURERS WITH RESPECT TO AUTOMOBILE GLASS REPLACEMENT, AUTOMOBILE GLASS REPAIRS, AUTOMOTIVE GLASS PRODUCTS, AND AUTOMOBILE REPAIRS; ALLOWING INSURERS TO INFORM INSURED PERSONS AND CLAIMANTS ABOUT REPAIR OPTIONS AND PROGRAMS AVAILABLE UNDER THE INSURANCE POLICY; PROVIDING THAT AN INSURED PERSON OR CLAIMANT HAS THE RIGHT TO CHOOSE THE BUSINESS OR LOCATION FOR AUTOMOBILE GLASS REPLACEMENT OR REPAIRS, PURCHASE OF AUTOMOBILE GLASS PRODUCTS, OR AUTOMOBILE REPAIRS; REQUIRING THAT THE INSURED PERSON OR CLAIMANT BE INFORMED OF THE RIGHT TO CHOOSE; RESTRICTING THE DISTRIBUTION OF PROPRIETARY PRICING INFORMATION; PROVIDING FOR A GRIEVANCE PROCEDURE~~ GENERALLY REVISING THE INSURANCE UNFAIR TRADE PRACTICES LAW WITH RESPECT TO AUTOMOBILE GLASS REPLACEMENT, AUTOMOBILE GLASS REPAIR, AUTOMOBILE GLASS PRODUCTS, AND AUTOMOBILE BODY REPAIR; AMENDING SECTIONS 30-14-225 ~~AND 33-18-222, MCA; REPEALING SECTIONS 33-18-221, 33-18-223, 33-18-224~~, 33-18-221, 33-18-222, 33-18-223, 33-18-224, AND 33-18-1006, MCA; PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

~~NEW SECTION. **Section 1. Prohibited acts or practices of insurers -- right to choose repair business or location -- liability -- proprietary pricing information -- grievances and remedies.** (1) An insurer, including its producers, designated administrators, adjusters, and employees, that issues or renews a policy of insurance in this state covering, in whole or in part, a motor vehicle may not:~~

~~(a) require a person insured or a claimant under the policy to use a particular business or location for automobile glass replacement, automobile glass repair services, purchase of automobile glass products, or automobile repair services; or~~

~~(b) engage in any act or practice that intimidates, coerces, or threatens an insured person or a claimant or provide an incentive or inducement for an insured person or a claimant to use a particular business or location for automobile glass replacement, automobile glass repair services, purchase of~~

~~automobile glass products, or automobile repair services.~~

~~(2) For the purposes of subsection (1), the following are not acts or practices that intimidate, coerce, or threaten an insured person or a claimant or that provide an incentive or inducement:~~

~~(a) providing an insured person or a claimant with information about particular businesses or locations that provide automobile glass replacement, automobile glass repair services, automobile glass products, or automobile repair services with which the insurer or its designated administrator has established a business relationship;~~

~~(b) providing an insured person or a claimant with a list of all established businesses or locations that provide automobile glass replacement, automobile glass repair services, automobile glass products, or automobile repair services, that are reasonably close to the insured person or claimant, and that offer a warranty for the services or products provided by the businesses or locations;~~

~~(c) providing an insured person or a claimant with a list of particular businesses or locations that provide automobile glass replacement, automobile glass repair services, automobile glass products, or automobile repair services that are reasonably close to the insured person or claimant. The insurer or its designated administrator may restrict the list to those businesses or locations that meet or have agreed to the insurer's or designated administrator's reasonable standards of quality, service, safety, and price. If the restricted list is provided, the insurer or its designated administrator shall inform the insured person or claimant of the insured person's or claimant's right to use a nonlisted company or location as provided in subsection (3).~~

~~(d) providing an insured person or a claimant with information about repair options made available by an insurer or its designated administrator to an insured person or claimant under an insured person's policy;~~

~~(e) describing the process by which the claim of an insured person or claimant would be adjusted and paid; or~~

~~(f) referring to a warranty issued by the insurer, its designated administrator, or a business or location that provides automobile glass replacement, glass repair services, glass products, or automobile repair services.~~

~~(3) The insured person or claimant may use a nonlisted company or location at the insured person's or claimant's sole discretion and subject to the provisions of subsection (4). The insurer or its designated administrator shall promptly pay for the cost of automobile glass replacement, automobile glass~~

~~repair services, automobile glass products, or automobile repair services provided, less any deductible under the terms of the policy.~~

~~(4) This section does not require an insurer or its designated administrator to pay more for automobile glass replacement, automobile glass repair services, automobile glass products, or automobile repair services than the prevailing market price as defined in 33-18-222.~~

~~(5) Notwithstanding the provisions of subsections (1) through (4), an insurer or its designated administrator may agree to pay the full cost of automobile glass replacement, automobile glass repairs, automobile glass products, or automobile repairs.~~

~~(6) It is unlawful for a business or location that provides automobile glass replacement, automobile glass repair services, automobile glass products, or automobile repair services to charge or agree to charge an insured person or claimant more than an uninsured person for any automobile glass replacement, automobile glass repair services, automobile glass product, or automobile repair services.~~

~~(7) An insurer or its designated administrator that contracts with an independent adjuster may not be held liable for the independent adjuster's failure to comply with the terms of this section unless the independent adjuster is clearly acting at the direction of the insurer or its designated administrator.~~

~~(8) If the insured person or claimant uses a business or location for automobile glass replacement, automobile glass repair services, automobile glass products, or automobile repair services with which the insurer or its designated administrator does not have an established business relationship under subsection (2)(a) or that is not on a list provided under subsection (2)(b) or (2)(c), the insurer or its designated administrator may not be held liable for any services performed or products provided by the business or location that the insured person or claimant chooses to use.~~

~~(9) An insurer or its designated administrator that through the processing of repair bills obtains proprietary pricing information about an insurer or a business or location that provides automobile glass replacement, automobile glass repair services, automobile glass products, or automobile repair services may not disclose the proprietary pricing information obtained to any other insurer, designated administrator, or business or location that provides automobile glass replacement, automobile glass repair services, automobile glass products, or automobile repair services, except as is reasonably necessary to process a claim.~~

~~(10) In the event of any dispute concerning a provision of this section, the aggrieved person may submit a complaint to the commissioner for a determination in accordance with the provisions of Title 33,~~

~~chapter 1, part 7.~~

~~**Section 2.** Section 30-14-225, MCA, is amended to read:~~

~~"**30-14-225. Prohibited practices -- advertising allowed -- violations.** (1) A person engaged in automobile repair or the sale, repair, or replacement of automobile glass or in the business of automobile repair may not:~~

~~(a) advertise, promise to provide, or offer any coupon, credit, or rebate to pay all or part of an insurance deductible under a casualty or property insurance policy, including any incentive to purchase automobile glass or automobile repairs offered to the customer in which the customer, in conjunction with the purchase of automobile glass or automobile repairs, receives cash or other valuable consideration; or~~

~~(b) pay a sum or incentive to an individual or entity for directing automobile repair services or~~ automobile ~~glass replacement or repair or the purchase of a glass product.~~

~~(2) A person or association of persons engaged in automobile repair services or the sale, repair, or replacement of automobile glass may advertise services as to quality, service, and safety.~~

~~(3) A glass broker, as defined in 33-18-223, or an automobile repair business may not manage, handle, or arrange automobile glass replacement or glass repair work or automobile repair services for which the glass broker or the automobile repair business retains a percentage of the claim.~~

~~(4) Except as provided in 33-18-224, in a communication between an insurer and an insured regarding an insurance claim, the insurer may not:~~

~~(a) require, suggest, or encourage the use of the name of a particular automobile repair business or location; or~~

~~(b) mention or provide the name of a particular automobile repair business or location.~~

~~(5)~~(3) ~~(a) A violation of subsection (1)(a) is an unfair and deceptive act under 30-14-103.~~

~~(b) A person engaged in the sale, repair, or replacement of automobile glass or in the business of automobile repair who violates subsection (1)(a) is also subject to the insurance fraud protection provisions of Title 33, chapter 1, part 12."~~

~~**Section 3.** Section 33-18-222, MCA, is amended to read:~~

~~"**33-18-222. Prevailing market price.** For purposes of 33-18-221, 33-18-223, and 33-18-224~~ [section 1], ~~"prevailing market price" means the lowest competitive and generally accepted market price~~

~~in a local area. The prevailing market price may not be less than cost as provided in 30-14-209."~~

~~NEW SECTION. **Section 4. Repealer.** Sections 33-18-221, 33-18-223, 33-18-224, and 33-18-1006, MCA, are repealed.~~

~~NEW SECTION. **Section 5. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 33, chapter 18, part 2, and the provisions of Title 33, chapter 18, part 2, apply to [section 1].~~

SECTION 1. SECTION 30-14-225, MCA, IS AMENDED TO READ:

"30-14-225. Prohibited practices -- advertising allowed -- violations. (1) A person engaged in ~~automobile repair or~~ the sale, repair, or replacement of automobile glass ~~or in the business of automobile repair~~ may not:

(a) advertise, promise to provide, or offer any coupon, credit, or rebate to pay all or part of an insurance deductible under a casualty or property insurance policy, including any incentive to purchase automobile glass ~~or automobile repairs~~ offered to the customer in which the customer, in conjunction with the purchase of automobile glass ~~or automobile repairs~~, receives cash or other valuable consideration; or

(b) pay a sum or incentive to an individual or entity for directing ~~automobile repair services or~~ glass replacement or repair or the purchase of a glass product.

(2) A person or association of persons engaged in ~~automobile repair services or~~ the sale, repair, or replacement of automobile glass may advertise services as to quality, service, and safety.

(3) A glass broker, as defined in 33-18-223, ~~or an automobile repair business~~ may not manage, handle, or arrange automobile glass replacement or glass repair work ~~or automobile repair services~~ for which the glass broker ~~or the automobile repair business~~ retains a percentage of the claim.

~~(4) Except as provided in 33-18-224, in a communication between an insurer and an insured regarding an insurance claim, the insurer may not:~~

~~(a) require, suggest, or encourage the use of the name of a particular automobile repair business or location; or~~

~~(b) mention or provide the name of a particular automobile repair business or location.~~

~~(5)~~(4) (a) A violation of subsection (1)(a) is an unfair and deceptive act under 30-14-103.

(b) A person engaged in the sale, repair, or replacement of automobile glass ~~or in the business of automobile repair~~ who violates subsection (1)(a) is also subject to the insurance fraud protection provisions of Title 33, chapter 1, part 12."

SECTION 2. SECTION 33-18-221, MCA, IS AMENDED TO READ:

"33-18-221. Designation of specific repair shops ~~and discrimination against insured customers~~ prohibited -- lists allowed. (1) An insurance company, including its producers and adjusters, that issues or renews a policy of insurance in this state covering, in whole or part, a motor vehicle may not:

(a) require that a person insured under the policy use a particular company or location for providing automobile glass replacement, glass repair services, or glass products insured in whole or part by the policy; or

(b) engage in any act or practice of intimidation, coercion, or threat for or against an insured person to use a particular company or location to provide automobile glass replacement, glass repair services, or glass products insured, in whole or in part, under the terms of an insurance policy.

(2) (a) An insurance company may provide an insured with a list that includes the names of particular companies or locations providing automobile glass replacement, glass repair services, or glass products if some of the listed companies or locations are reasonably close and convenient to the insured. The insurance company may restrict the list to those companies or locations that meet reasonable standards of quality, service, and safety.

(b) The insured may use a nonlisted company or location at the insured's sole discretion, and subject to the provisions of subsections (2)(c) and (3), the insurance company will fully and promptly pay for the cost of automobile glass replacement, glass repair services, or glass products provided, less any deductible under the terms of the policy.

(c) If the insured does not use a list as provided in subsection (2)(a), the insurer may require the insured to obtain not more than three competitive bids to establish the cost of automobile glass replacement, glass repair services, or glass products provided.

(3) This section does not require an insurer to pay more for automobile glass replacement, glass repair services, or glass products than the lowest prevailing market price as defined in 33-18-222.

(4) Notwithstanding the provisions of subsections (1) through (3), an insurance company may agree to pay the full cost of glass replacement or repair.

~~(5) It is unlawful for a company or location that provides automobile glass replacement services to charge or agree to charge an insured customer more than an uninsured customer for any automobile glass replacement service.~~"

SECTION 3. SECTION 33-18-222, MCA, IS AMENDED TO READ:

"**33-18-222. ~~Prevailing~~ Lowest prevailing market price.** For purposes of 33-18-221, and 33-18-223, ~~and 33-18-224,~~ ~~"prevailing market price"~~ "lowest prevailing market price" means the lowest ~~competitive and generally accepted~~ market price in a local area. The prevailing market price may not be less than cost as provided in 30-14-209."

SECTION 4. SECTION 33-18-223, MCA, IS AMENDED TO READ:

"**33-18-223. Prohibited activities -- glass broker defined.** (1) It is unlawful for an insurance company, individually or with others, to directly or indirectly:

(a) establish an agreement with any person to act as a glass broker for the insurance company under which the glass broker sets a price that must be met by a glass repair shop as a condition for doing glass replacement or glass repair work for the insurance company;

(b) establish an agreement with a glass broker that requires a glass repair shop to bill through that glass broker as a condition of doing glass replacement or glass repair work; or

(c) establish a price that must be met by a glass repair shop as a condition for doing glass replacement or glass repair work that is below the prevailing market price as provided in 33-18-222~~;~~.

~~(d) establish an agreement for the processing of claims or bills with a glass broker or with an entity that has a financial interest in an entity in this state that installs or provides glass for installation; or~~

~~(e) share information obtained through the processing of glass replacement or glass repair bills with an entity that is involved directly or indirectly in any aspect of the glass manufacturing, replacement, or repair business.~~

(2) As used in this section, "glass broker" means an automobile glass company that acts as a third-party agent for the insurer whenever the glass broker enters into agreements with other automobile glass dealers to perform glass replacement or glass repair work ~~or that installs or manufactures glass or provides glass for installation~~."

SECTION 5. SECTION 33-18-224, MCA, IS AMENDED TO READ:

"33-18-224. Designation of specific automobile body repair shops prohibited ~~— certain requirements — allowances~~. (1) An insurance company, including its ~~employees~~ producers and adjusters, that issues or renews a policy of insurance in this state covering, in whole or in part, a motor vehicle may not:

(a) require ~~or encourage~~ that a person insured ~~or a claimant~~ under the policy ~~to~~ use a particular automobile body repair business or location; or

(b) engage in any act or practice that intimidates, coerces, or threatens an insured person ~~or a claimant~~ or that provides an incentive or inducement for an insured person ~~or a claimant~~ to use a particular automobile body repair business or location~~;~~.

~~(c) except as provided in subsection (2):~~

~~(i) suggest the use of a particular automobile repair business or location;~~

~~(ii) mention or provide the name of a particular automobile repair business or location;~~

~~(iii) direct an insured or claimant to an automobile repair business or location or entity in Montana that engages in or has a financial interest in the processing of a claim or bill unless the business or location has been selected by the insured or claimant; or~~

~~(iv) share information obtained through the processing of an automobile repair bill with an entity that is involved directly or indirectly in any aspect of the automobile repair business; or~~

~~(d) suggest or direct its appointed producers to suggest, mention, provide the name of, or encourage the use of a particular automobile repair business or location to an insured person or a claimant.~~

~~(2) (a) Subsections (1)(a), (1)(b), and (1)(c)(iii) apply to all insurance producers; and~~

~~(b) subsections (1)(c)(i) and (1)(c)(ii) apply only to insurance producers that:~~

~~(i) write automobile insurance for primarily one insurer; or~~

~~(ii) are contractually obligated to use one automobile insurer before using other insurers.~~

~~(3)~~(2) ~~An insurer may~~ For the purposes of this section, an incentive or inducement does not include:

(a) ~~provide~~ providing an insured person or a ~~claimant~~ customer with a list of all established automobile body repair businesses or locations reasonably close to the insured person or ~~claimant~~ customer that offer a warranty for the automobile body repair services provided by the businesses or locations; ~~or~~

(b) ~~provide~~ providing an insured person or a ~~claimant~~ customer with a list of particular ~~automobile~~

~~repair businesses or locations that are reasonably close to the insured person or claimant that meet~~ body repair shops meeting reasonable standards of quality, service, and safety when the list is requested by the insured person or customer; or

(c) referring to a warranty issued by an automobile body repair business or location.

~~(4) If an insurer elects to provide an insured person or a claimant with the list described in subsection (3)(b), the insurer shall:~~

~~(a) upon the request of any automobile repair business or location, make available the reasonable standards of quality, service, and safety that are to be met by automobile repair businesses or locations in order to be placed on the list. The standards may not exclude a business or location from being on the list solely on the basis of the size or location of the automobile repair business, the number of persons employed in the business, or pricing other than what is fair or reasonable in the market area of the automobile repair business or location.~~

~~(b) include on the list any automobile repair business or location that meets the standards and indicates in writing to the insurer that the business or location desires to be placed on the list.~~

~~(5) In the event of any dispute, the business or location may submit a complaint to the commissioner for a determination in accordance with the provisions of Title 33, chapter 1, part 7.~~

~~(6) In distributing the list provided for in subsection (3) to an insured or a claimant or in any discussion of the list with an insured or a claimant, an insurer may not express a preference or mention an advantage or inducement for the insured or the claimant to use a particular automobile repair facility or location on the list.~~

~~(7)~~(3) The insured may use a business or location at the insured's ~~or claimant's~~ sole discretion. ~~The~~, and the insurance company shall pay for the reasonable and necessary cost of the automobile body repair services for covered damages, less any deductible under the terms of the policy. This section does not require an insurer to pay more for automobile body repair services than the lowest prevailing market price, as defined in 33-18-222. ~~An insurer shall inform the insured person or claimant of the insured person's or claimant's rights under this subsection.~~

~~(8)~~(4) If the insured person ~~or claimant~~ uses an automobile body repair business or location not on a list provided under subsection ~~(3)(a) or (3)(b)~~ (2)(a) or (2)(b), the insurance company may not be held liable for any repair work performed by the automobile body repair business or location that the insured person chooses to use.

~~(9)~~(5) It is unlawful for an automobile body repair business or location to charge or agree to charge an insured customer more than an uninsured customer for any automobile body repair service.

~~(10)~~(6) An insurance company that contracts with an independent adjuster may not be held liable for the independent adjuster's failure to comply with the terms of this section ~~unless the independent adjuster is clearly acting at the direction of the insurance company~~.

~~(11)~~(7) For purposes of this section, "automobile body repair business or location" does not include a business or location that exclusively provides automobile glass replacement, glass repair services, or glass products."

SECTION 6. SECTION 33-18-1006, MCA, IS AMENDED TO READ:

"33-18-1006. Desist orders for prohibited practices ~~-- court injunctions~~. ~~(1)~~ Violations of 33-18-221 through ~~33-18-224~~ 33-18-223 are subject to cease and desist orders of the commissioner issued under 33-18-1004.

~~(2) The commissioner, the attorney general, or a county attorney of the county where a violation of 33-18-221 through 33-18-224 is alleged may bring an action to enjoin any further violation of 33-18-221 through 33-18-224 in the first judicial district or in the county where the violation is alleged to have occurred.~~"

NEW SECTION. **Section 7. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 8. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 9. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to ~~January 1, 2000~~ OCTOBER 1, 1999.

- END -

SENATE BILL NO. 474

INTRODUCED BY D. GRIMES

A BILL FOR AN ACT ENTITLED: "AN ACT ~~PROHIBITING CERTAIN ACTS OR PRACTICES OF INSURERS WITH RESPECT TO AUTOMOBILE GLASS REPLACEMENT, AUTOMOBILE GLASS REPAIRS, AUTOMOTIVE GLASS PRODUCTS, AND AUTOMOBILE REPAIRS; ALLOWING INSURERS TO INFORM INSURED PERSONS AND CLAIMANTS ABOUT REPAIR OPTIONS AND PROGRAMS AVAILABLE UNDER THE INSURANCE POLICY; PROVIDING THAT AN INSURED PERSON OR CLAIMANT HAS THE RIGHT TO CHOOSE THE BUSINESS OR LOCATION FOR AUTOMOBILE GLASS REPLACEMENT OR REPAIRS, PURCHASE OF AUTOMOBILE GLASS PRODUCTS, OR AUTOMOBILE REPAIRS; REQUIRING THAT THE INSURED PERSON OR CLAIMANT BE INFORMED OF THE RIGHT TO CHOOSE; RESTRICTING THE DISTRIBUTION OF PROPRIETARY PRICING INFORMATION; PROVIDING FOR A GRIEVANCE PROCEDURE~~ GENERALLY REVISING THE INSURANCE UNFAIR TRADE PRACTICES LAW WITH RESPECT TO AUTOMOBILE GLASS REPLACEMENT, AUTOMOBILE GLASS REPAIR, AUTOMOBILE GLASS PRODUCTS, AND AUTOMOBILE BODY REPAIR; AMENDING SECTIONS 30-14-225 ~~AND 33-18-222, MCA; REPEALING SECTIONS 33-18-221, 33-18-223, 33-18-224~~, 33-18-221, 33-18-222, 33-18-223, 33-18-224, AND 33-18-1006, MCA; PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE REPRINTED. PLEASE REFER TO SECOND READING COPY (YELLOW) FOR COMPLETE TEXT.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN JOE MCKENNEY**, on March 26, 2001 at 8:00 A.M., in Room 172 Capitol.

ROLL CALL

Members Present:

Rep. Joe McKenney, Chairman (R)
Rep. Rod Bitney, Vice Chairman (R)
Rep. Gary Matthews, Vice Chairman (D)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Roy Brown (R)
Rep. Nancy Fritz (D)
Rep. Dave Gallik (D)
Rep. Kathleen Galvin-Halcro (D)
Rep. Dennis Himmelberger (R)
Rep. Carol C. Juneau (D)
Rep. Jim Keane (D)
Rep. Rick Laible (R)
Rep. Bob Lawson (R)
Rep. John Musgrove (D)
Rep. William Price (R)
Rep. Allen Rome (R)
Rep. Donald Steinbeisser (R)
Rep. James Whitaker (R)

Members Excused: Rep. Brett Tramelli (D)

Members Absent: None.

Staff Present: Gordon Higgins, Legislative Branch
Jane Nofsinger, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted: HB593, SB469, SB474, 3/21/2001
Executive Action: None

REP. GALLIK said it is difficult and expensive to move and what would happen if it doesn't work out. **Director Foster** said the agreement was good as long as the legislature allows it to happen. **REP. GALLIK** asked if there has been a situation that indicates we need this. **Director Foster** said yes, the **Governor** wants to move forward with economic development.

Closing by Sponsor:

Director Foster said the bill was about coordination. He said there was a lack of knowledge about the programs and how they work, and it is important for the **Governor** to be able to have this flexibility.

{Tape : 3; Side : A; Approx. Time Counter : 3}

HEARING ON SB474

Sponsor: SEN. DUANE GRIMES, SD20, CLANCY

Proponents: Gregg Van Horssen, State Farm
Jacqueline Lenmark, AIA
Jon Metropolous, Farmers Insurance and NAII
Jan Van Riper, State Auditor's Office
Stan Kaleczyk, PPG & Link Services
Tom Daubert, Collision and Repair Shop Assn.
Bob Gilbert, Cascade Auto Glass
Mike Evans, Diamond Auto Glass
Daniel Carter, Pinnacle Glass
Bud LaRoche, Crystal Clear
Bob Mytty, Crystal Clear

Opponents: Amy Orser, glass repair

Opening Statement by Sponsor:

SEN. DUANE GRIMES, SD20, CLANCY, said the bill on auto glass last session was unacceptable to insurers and they decided to take it to court, so the law never went into effect, and has been enjoined. He said the insurers don't want price-fixing or predatory pricing. He said he knew from his experience owning a fleet of trucks that there are different grades of glass. He said the quality of the glass used in a windshield is a safety issue. He said this bill attempts to take the law back to the way it was, and the amendment will use the price charged by the majority of operators in an area, instead of using the lowest common

denominator. He said let the insurance companies decide what the price should be or add another amendment which would allow for different grades of glass. He said the bill protects insurers from paying exorbitant prices. **EXHIBIT(buh68a15)**

Proponents' Testimony:

Mr. Van Horssen said the bill from last session would have placed restrictions on insurance and glass companies and affected freedom of speech and interstate commerce. He said a New York district court had rendered a similar law unconstitutional. He said this bill will resolve the federal lawsuit and retain the 1993 law. He said it will also allow productive discussions over the next biennium so there might be an agreement by the next session. He said there would be amendments forthcoming.

Ms. Lenmark said she also represented some parties in this litigation, and she wanted to stress the amendments were necessary. She said it is essential this bill moves and repeals HB506. She agreed discussions would continue and urged the committee to resist any amendments other than repealing HB506.

Mr. Metropolous agreed it was a complicated issue. He said there were flaws in the previous bill, and he feared tinkering would create more litigation.

{Tape : 3; Side : B; Approx. Time Counter : 0}

Ms. Van Riper said she reluctantly opposed **SEN. GRIMES'** amendment because it would affect the lawsuit which was still at discovery stage. She said the prevailing rate issue was complicated, and they had tried to reach a group consensus.

Mr. Kaleczyk supported the bill with the amendment to strike HB506 because that would terminate the lawsuit.

Mr. Daubert endorsed the bill with the amendment, but resisted **SEN. GRIMES'** amendment. He said the amendment speaks to a broader subject.

Mr. Gilbert said he was not part of the agreement and a whole number of shops were not included, or even aware of the agreement. He said this will cost the consumers money and quality.

Mr. Evans said last year his shops were shorted $60,000 in insurance payments. "We sell a service, not a good," he said. He said 55% of the structural integrity of an automobile is the windshield and if the windshield doesn't hold in a rollover, it

can be deadly. If the insurance company wants the cheapest it is not the safest. "I'm on my own, I can't fight these folks, neither can the state," he said. **SEN. GRIMES'** amendment says "fair price," and he preferred to support SB474, even though he feared it would be back in the legislature.

Also speaking for the bill were **Daniel Carter, Bud LaRocke, and Bob Mytty.**

Opponents' Testimony:

Ms. Orser said she can support the amendment but not the bill. She noted her family had been in the auto glass business 21 years. She presented written testimony. **EXHIBIT(buh68a16)**

Questions from Committee Members and Responses:

REP. LAIBLE asked **Ms. Van Riper** if she endorsed a bill with amendments yet to come, but not **SEN. GRIMES'** amendment. **Ms. Van Riper** said yes, so just so it repeals HB506.

{Tape : 4; Side : A; Approx. Time Counter : 0}
REP. GALLIK asked **Mr. Evans** if they asked a customer if they had insurance. **Mr. Evans** said they ask because the $100 deductible might be an advantage to use. He said the insurance company sets the price and says what they will pay. If they sign the agreement the insurance company will send customers to them, if not they won't send them. He said they have $400,000 in receivables and it 95% is from insurance companies. He said a full time collection person is required for nothing but insurance companies. He said cash customers are easier and more efficient to deal with than insurance companies.

REP. KEANE asked **Mr. Evans** about different grades of materials and their costs. **Mr. Evans** said the lowest federally approved sealant is $2.97 a tube and takes 1 ½ tubes for a windshield. He said the best product was Best-Seal and it cost $23 per installation and made a great deal of difference in the quality of the work.

Closing by Sponsor:

SEN. GRIMES closed by telling the committee "to keep the insurance companies in the driver's seat." He also reminded them there was a tremendous difference in quality of windshield glass and repair.

HOUSE OF REPRESENTATIVES
ROLL CALL

HOUSE BUSINESS AND LABOR COMMITTEE

DATE MARCH 26, 2001

NAME	PRESENT	ABSENT	EXCUSED
Rep. Joe McKenney	✓		
Rep. Gary Matthews	✓		
Rep. Roy Brown	✓		
Rep. Kathleen Galvin-Halcro	✓		
Rep. Carol Juneau	✓		✓
Rep. Rick Laible	✓		
Rep. John Musgrove	✓		
Rep. Nancy Rice-Fritz	✓		
Rep. Don Steinbeisser	✓		
Rep. Jim Whitaker	✓		
Rep. Rod Bitney	✓		✓
Rep. Sylvia Bookout-Reinicke	✓		
Rep. Dave Gallik	✓		
Rep. Dennis Himmelberger	✓		
Rep. Jim Keane	✓		
Rep. Bob Lawson	✓		
Rep. Bill Price	✓		
Rep. Brett Tramelli	✓		✓
Rep. Allen Rome	✓		

EXHIBIT 15
DATE 3-26-01
SB 474

15

Amendments to Senate Bill No. 474
3rd Reading Copy

Requested by Senator Duane Grimes

For the House Business and Labor Committee

Prepared by Bartley Campbell
March 26, 2001 (8:38AM)

1. Page 6, line 28.
Strike: "lowest"

2. Page 7, line 6.
Strike: "**Lowest prevailing**"
Insert: "Prevailing"

3. Page 7, line 7.
Strike: ""lowest prevailing"
Insert: ""prevailing"
Strike: "lowest"

4. Page 7, line 8.
Strike: "market price in a local area"
Insert: "price charged by a majority of glass repair service, glass replacement, or automobile body repair service businesses in a like service area"

5. Page 9, line 24.
Strike: "lowest"

- END -

EXHIBIT 16
DATE 3-26-01
SB 474

16

Good morning Mr. Chairman and members of the committee.

My name is Amy Orser. I live in Helena and with my husband we own and operate a mobile windshield repair business in five counties. Our business will be 21 years old this August.

I'd like to thank Senator Grimes for his amendments to SB 474. I can support the amendments but I can't support the bill. We have had a bill like SB 474 every legislative session since 1993. In my opinion, HB 506, which was passed in 1999 was most beneficial to small glass shop owners around the state. Unfortunately, a restraining order was issued two months before the bill became law. (Case number 99-CV-34 will be heard next month.)

As I stated before, this is the fifth session we've had a bill dealing with this topic. Wouldn't you think one or possibly two legislative sessions would be sufficient to take care of laws pertaining to windshield repair and replacement and auto body repair? I think the problem is enforcement. Since 1993, I have been in constant contact with the State Auditors Office over many violations of all the statutes that have gone into effect since 1993.

On page 5 of SB 474, lines 14-17 are currently law. In the 2000/2001 Helena Yellow Pages, there are two violations of MCA 30-14-225 (see attachment). Because the law was not enforced there are four violations of this code in the 2001/2002 Helena Yellow Pages.

We all know how difficult it is to successfully operate a Montana business. The burden is unnecessarily doubled when a competitor circumvents or breaks the law to his advantage and is not punished. It is my wish that HB 506, passed by the 1999 legislature, is enforced as law and that small Montana businesses have a chance to prosper and contribute to the Treasure State economy. Thank you for your time this morning.

Amy Orser
PO Box 4332
Helena, MT
59604

1999

to the person so convicted. In such case no new license may be granted to the person whose license is revoked or to anyone either directly or indirectly engaged with him in such business for a period of 1 year.

History: En. 51-524 by Sec. 24, Ch. 518, L. 1977; R.C.M. 1947, 51-524; amd. Sec. 9, Ch. 187, L. 1979.

0-14-225

[redacted] Prohibited practices — advertising allowed — violations. (1) A person engaged in automobile repair or the sale, repair, or replacement of automobile glass or in the business of automobile repair may not:

(a) advertise, promise to provide, or offer any coupon, credit, or rebate to pay all or part of an insurance deductible under a casualty or property insurance policy, including any incentive to purchase automobile glass or automobile repairs offered to the customer in which the customer, in conjunction with the purchase of automobile glass or automobile repairs, receives cash or other valuable consideration; or

(b) pay a sum or incentive to an individual or entity for directing automobile repair services or glass replacement or repair or the purchase of a glass product.

(2) A person or association of persons engaged in automobile repair services or the sale, repair, or replacement of automobile glass may advertise services as to quality, service, and safety.

(3) A glass broker, as defined in 33-18-223, or an automobile repair business may not manage, handle, or arrange automobile glass replacement or glass repair work or automobile repair services for which the glass broker or the automobile repair business retains a percentage of the claim.

(4) Except as provided in 33-18-224, in a communication between an insurer and an insured regarding an insurance claim, the insurer may not:

(a) require, suggest, or encourage the use of the name of a particular automobile repair business or location; or

(b) mention or provide the name of a particular automobile repair business or location.

(5) (a) A violation of subsection (1)(a) is an unfair and deceptive act under 30-14-103.

(b) A person engaged in the sale, repair, or replacement of automobile glass or in the business of automobile repair who violates subsection (1)(a) is also subject to the insurance fraud protection provisions of Title 33, chapter 1, part 12.

History: En. Sec. 4, Ch. 554, L. 1993; amd. Sec. 1, Ch. 207, L. 1997; amd. Sec. 1, Ch. 174, L. 1999; amd. Sec. 1, Ch. 526, L. 1999.

Compiler's Comments

1999 Amendments — Composite Section: Chapter 174 in (1) in introductory clause after "glass" inserted "or in the business of automobile repair"; in (1)(a) at end inserted "including any incentive to purchase automobile glass or automobile repairs offered to the customer in which the customer, in conjunction with the purchase of automobile glass or automobile repairs, receives cash or other valuable consideration"; and inserted (5) establishing violations. Amendment effective October 1, 1999.

Chapter 526 throughout (1), (2), and (3) inserted references to automobile repair; and inserted (4) prohibiting an insurer from directing or encouraging the use of a particular automobile repair business. Amendment effective October 1, 1999.

Cross-References

Automobile glass repair shops — provisions pertaining to insurance, 33-18-221 through 33-18-223.

Windshield tinting — restrictions, 61-9-405.

51

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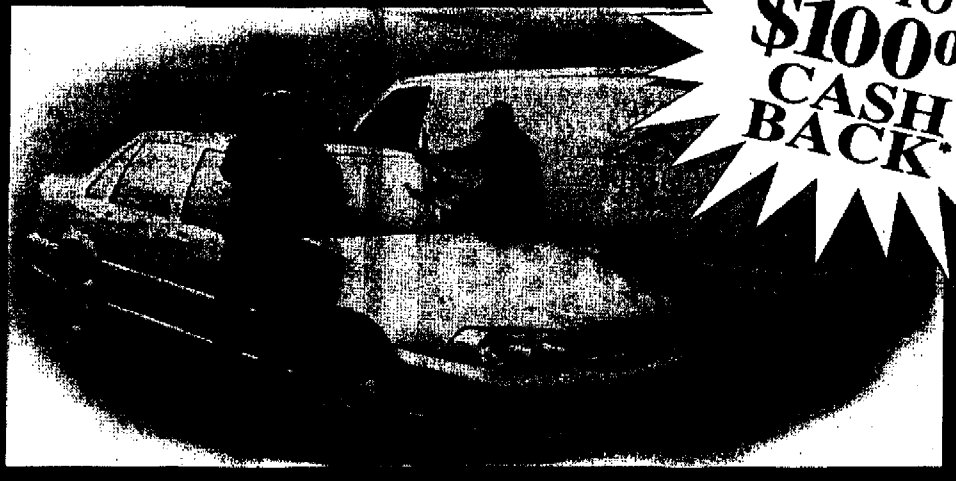

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(Continued Next Page)

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Daniel Carter, Owner

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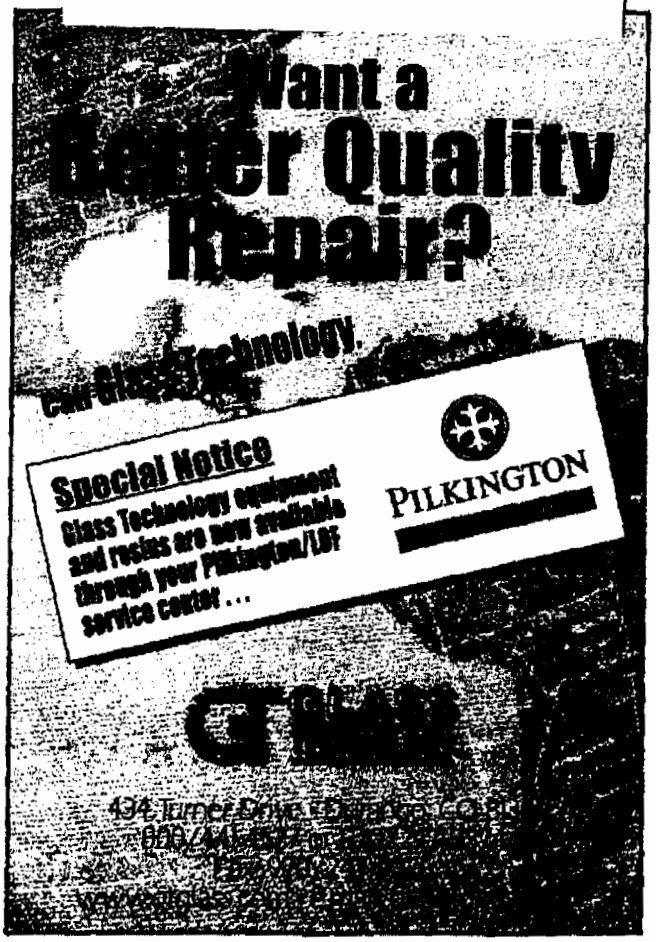

USGAUTO NEWS

Safelite, LYNX and Insurers Sue Montana

In reaction to legislation that the Montana Independent Glass Dealers Association introduced and helped pass last spring, State Farm Mutual Automobile Insurance Company, Allstate Insurance Company, Progressive Corporation, Safelite, and LYNX Services have brought four different suits against the State of Montana, as well as the state's Attorney General, the Insurance Commissioner and Department of Commerce.

The suits challenge the Montana law passed this spring that outlaws the waiver of deductibles for glass replacement, third-party billing, inconsistent prices for cash and insurance customers and steering. The plantiffs charge that this law is unconstitutional by violating commercial free speech and interfering with free trade.

While the plantiffs have some heavy hitters, the State of Montana is not expected to back down. "We are going to fight this vigorously," said Gary Spaeth of the state insurance commissioner's office.

This is welcome news to the state glass association, which put in a lot of effort to get the law passed. "We need this law," said Truman Strouf, president of the association. We are laboring under a monopoly [Safelite's alignment with the major insurance providers] and it is breaking everyone's back," he said.

Texans Appeal Their Case

More than a year after their case was dismissed from Eastern District Court in Beaumont, TX, the nine Texas glass shops suing Safelite Corporation of Columbus, OH, and Harmon Glass Company of Minneapolis, MN, have filed and made an appeal contracts *(see September 1995 and September 1998 USGlass Industry News)*. The eight shops had charged the network chains, which originally included U.S. Auto Glass Discount Centers Inc. of Chicago and Windshields America Inc. of Bedford, NH, before they merged with Safelite, with violations of the Sherman Antitrust Act and Clayton Act.

The lawsuit, filed in September 1995, sought to recover $10 million in damages for boycott and tortuous interference with contracts *(see September 1995 and September 1998 USGlass Industry News)*.

USGlass Magazine

Auditor settles dispute with glass brokerage firms

By State Bureau

HELENA — State Auditor Mark O'Keefe and the Commerce Department announced this week the settlement of a year-long dispute with two glass brokerage firms that illegally offered to pay customers' insurance deductibles.

The state said Wednesday it agreed to drop an administrative action against Olympic Auto Glass and Cascade Auto Glass, both based in Washington, in return for an assurance that they would not pay any or all of a customer's insurance deductible. In July 1999, the state filed a complaint against the two glass brokerage firms for violating a state law forbidding them from paying the deductible.

The two firms denied violating the law.

"Cascade and Olympic came to the table in good faith to try and resolve the dispute in a manner that was fair and equitable to all sides," said O'Keefe. "We're comfortable that consumers will be well served with this agreement."

O'Keefe said there was some confusion as to exactly what the law prohibited, but all sides agreed it forbids rebating insurance deductibles.

The settlement requires that any promotional activity by an auto glass brokerage company cannot be paid as a credit or reduction to an insurance deductible, but must be done through a separate payment to the customer. Also, auto repair companies cannot promote their offers, either through advertising or personal contacts, as being related to a customer's insurance deductible.

Promotional activities must be offered to all customers regardless of the existence or amount of the insurance deductible.

in 2001 yellowpages

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN JOE MCKENNEY**, on March 27, 2001 at 7:00 A.M., in Room 172 Capitol.

ROLL CALL

Members Present:

Rep. Joe McKenney, Chairman (R)
Rep. Gary Matthews, Vice Chairman (D)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Roy Brown (R)
Rep. Nancy Fritz (D)
Rep. Dave Gallik (D)
Rep. Kathleen Galvin-Halcro (D)
Rep. Dennis Himmelberger (R)
Rep. Carol C. Juneau (D)
Rep. Jim Keane (D)
Rep. Rick Laible (R)
Rep. Bob Lawson (R)
Rep. John Musgrove (D)
Rep. William Price (R)
Rep. Allen Rome (R)
Rep. Donald Steinbeisser (R)
Rep. Brett Tramelli (D)
Rep. James Whitaker (R)

Members Excused: Rep. Rod Bitney, Vice Chairman (R)

Members Absent: None.

Staff Present: Gordon Higgins, Legislative Branch
Jane Nofsinger, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB650, 3/23/2001
Executive Action: SB405, SB480, SB340, SB445, HB650, HB593, SB469, SB474, SB298, SB327, SB465

Motion: **REP. BOOKOUT-REINICKE** moved that **SB469 BE CONCURRED IN.**

Discussion:
Motion/Vote: **REP. GALVIN-HALCRO** moved that **SB469 BE AMENDED. Motion carried unanimously.**
Motion/Vote: **REP. GALVIN-HALCRO** moved that **SB469 BE CONCURRED IN AS AMENDED. Motion carried 15-4 with Fritz, Juneau, Keane, and Musgrove voting no.**
REP. LAWSON will carry the bill in the House.

EXECUTIVE ACTION ON SB474

Motion: **REP. LAWSON** moved that **SB474 BE CONCURRED IN.**

Discussion:
Motion: **REP. LAIBLE** moved that **SB474 BE AMENDED.**
{Tape : 3; Side : B; Approx. Time Counter : 0}
Vote: Motion **carried unanimously.**

Motion/Vote: **REP. LAIBLE** moved that **SB474 BE CONCURRED IN AS AMENDED. Motion carried unanimously.**

EXECUTIVE ACTION ON SB298

Motion: **REP. BOOKOUT-REINICKE** moved that **SB298 BE CONCURRED IN.**

Discussion:

Motion/Vote: **REP. LAWSON** moved that **SB298 BE AMENDED. Motion carried 18-1 with Whitaker voting no.**

Motion: **REP. LAWSON** moved that **SB298 BE CONCURRED IN AS AMENDED.**

Discussion:

Motion/Vote: **REP. KEANE** moved that **SB298 BE AMENDED. Motion carried unanimously.**

Motion/Vote: **REP. KEANE** moved that **SB298 BE CONCURRED IN AS AMENDED. Motion carried unanimously.**

EXECUTIVE ACTION ON SB327

Motion: **REP. BROWN** moved that **SB327 BE CONCURRED IN.**

HOUSE OF REPRESENTATIVES
ROLL CALL

HOUSE BUSINESS AND LABOR COMMITTEE

DATE March 27, 2001

NAME	PRESENT	ABSENT	EXCUSED
Rep. Joe McKenney	✓		
Rep. Gary Matthews	✓		
Rep. Roy Brown	✓		✓
Rep. Kathleen Galvin-Halcro	✓		
Rep. Carol Juneau	✓		
Rep. Rick Laible	✓		
Rep. John Musgrove	✓		
Rep. Nancy Rice-Fritz	✓		
Rep. Don Steinbeisser	✓		✓
Rep. Jim Whitaker	✓		
Rep. Rod Bitney			✓
Rep. Sylvia Bookout-Reinicke	✓		✓
Rep. Dave Gallik	✓		
Rep. Dennis Himmelberger	✓		
Rep. Jim Keane	✓		
Rep. Bob Lawson	✓		
Rep. Bill Price	✓		
Rep. Brett Tramelli	✓		
Rep. Allen Rome	✓		

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Business and Labor** recommend that **Senate Bill 474** (third reading copy – blue) **be concurred in as amended**.

Signed: _____
Representative Joe McKenney, Chair

To be carried by Representative Paul Sliter

And, that such amendments read:

1. Title, line 15.
Strike: "BODY"

2. Page 5, line 13.
Following: "~~repair~~"
Insert: "or in the business of automobile repair"

3. Page 5, line 16.
Following: "~~repairs~~"
Insert: "or automobile repairs"

4. Page 5, line 17.
Following: "~~repairs~~"
Insert: "or automobile repairs"

5. Page 6, line 2.
Following: "~~repair~~"
Insert: "or in the business of automobile repair"

6. Page 7, line 8.
Following: "The"
Insert: "lowest"

Committee Vote:
Yes 19, No 0.

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SB 1:30 3-2

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7. Page 7, line 20.
Following: "the"
Insert: "lowest"

8. Page 8, line 7.
Strike: "body"

9. Page 8, line 10.
Strike: "body"

10. Page 8, line 28.
Strike: "body"

11. Page 8, line 29.
Strike: "body"

12. Page 9, line 2.
Strike: "repair"

13. Page 9, line 4.
Strike: "body"

14. Page 9, line 27.
Strike: "body"

15. Page 9, line 29.
Strike: "body"

16. Page 10, line 1.
Strike: "body"

17. Page 10, line 2.
Strike: "body"

18. Page 10, line 6.
Strike: "body"

- END -

APPROVED BY COMM ON
BUSINESS & LABOR

SENATE BILL NO. 474

INTRODUCED BY D. GRIMES

A BILL FOR AN ACT ENTITLED: "AN ACT ~~PROHIBITING CERTAIN ACTS OR PRACTICES OF INSURERS WITH RESPECT TO AUTOMOBILE GLASS REPLACEMENT, AUTOMOBILE GLASS REPAIRS, AUTOMOTIVE GLASS PRODUCTS, AND AUTOMOBILE REPAIRS; ALLOWING INSURERS TO INFORM INSURED PERSONS AND CLAIMANTS ABOUT REPAIR OPTIONS AND PROGRAMS AVAILABLE UNDER THE INSURANCE POLICY; PROVIDING THAT AN INSURED PERSON OR CLAIMANT HAS THE RIGHT TO CHOOSE THE BUSINESS OR LOCATION FOR AUTOMOBILE GLASS REPLACEMENT OR REPAIRS, PURCHASE OF AUTOMOBILE GLASS PRODUCTS, OR AUTOMOBILE REPAIRS; REQUIRING THAT THE INSURED PERSON OR CLAIMANT BE INFORMED OF THE RIGHT TO CHOOSE; RESTRICTING THE DISTRIBUTION OF PROPRIETARY PRICING INFORMATION; PROVIDING FOR A GRIEVANCE PROCEDURE~~ GENERALLY REVISING THE INSURANCE UNFAIR TRADE PRACTICES LAW WITH RESPECT TO AUTOMOBILE GLASS REPLACEMENT, AUTOMOBILE GLASS REPAIR, AUTOMOBILE GLASS PRODUCTS, AND AUTOMOBILE ~~BODY~~ REPAIR; AMENDING SECTIONS 30-14-225 ~~AND 33-18-222, MCA; REPEALING SECTIONS 33-18-221, 33-18-223, 33-18-224~~, 33-18-221, 33-18-222, 33-18-223, 33-18-224, AND 33-18-1006, MCA; PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

~~NEW SECTION. **Section 1. Prohibited acts or practices of insurers -- right to choose repair business or location -- liability -- proprietary pricing information -- grievances and remedies.** (1) An insurer, including its producers, designated administrators, adjusters, and employees, that issues or renews a policy of insurance in this state covering, in whole or in part, a motor vehicle may not:~~

~~(a) require a person insured or a claimant under the policy to use a particular business or location for automobile glass replacement, automobile glass repair services, purchase of automobile glass products, or automobile repair services; or~~

~~(b) engage in any act or practice that intimidates, coerces, or threatens an insured person or a claimant or provide an incentive or inducement for an insured person or a claimant to use a particular business or location for automobile glass replacement, automobile glass repair services, purchase of~~

~~automobile glass products, or automobile repair services.~~

~~(2) For the purposes of subsection (1), the following are not acts or practices that intimidate, coerce, or threaten an insured person or a claimant or that provide an incentive or inducement:~~

~~(a) providing an insured person or a claimant with information about particular businesses or locations that provide automobile glass replacement, automobile glass repair services, automobile glass products, or automobile repair services with which the insurer or its designated administrator has established a business relationship;~~

~~(b) providing an insured person or a claimant with a list of all established businesses or locations that provide automobile glass replacement, automobile glass repair services, automobile glass products, or automobile repair services, that are reasonably close to the insured person or claimant, and that offer a warranty for the services or products provided by the businesses or locations;~~

~~(c) providing an insured person or a claimant with a list of particular businesses or locations that provide automobile glass replacement, automobile glass repair services, automobile glass products, or automobile repair services that are reasonably close to the insured person or claimant. The insurer or its designated administrator may restrict the list to those businesses or locations that meet or have agreed to the insurer's or designated administrator's reasonable standards of quality, service, safety, and price. If the restricted list is provided, the insurer or its designated administrator shall inform the insured person or claimant of the insured person's or claimant's right to use a nonlisted company or location as provided in subsection (3).~~

~~(d) providing an insured person or a claimant with information about repair options made available by an insurer or its designated administrator to an insured person or claimant under an insured person's policy;~~

~~(e) describing the process by which the claim of an insured person or claimant would be adjusted and paid; or~~

~~(f) referring to a warranty issued by the insurer, its designated administrator, or a business or location that provides automobile glass replacement, glass repair services, glass products, or automobile repair services.~~

~~(3) The insured person or claimant may use a nonlisted company or location at the insured person's or claimant's sole discretion and subject to the provisions of subsection (4). The insurer or its designated administrator shall promptly pay for the cost of automobile glass replacement, automobile glass~~

~~repair services, automobile glass products, or automobile repair services provided, less any deductible under the terms of the policy.~~

~~(4) This section does not require an insurer or its designated administrator to pay more for automobile glass replacement, automobile glass repair services, automobile glass products, or automobile repair services than the prevailing market price as defined in 33-18-222.~~

~~(5) Notwithstanding the provisions of subsections (1) through (4), an insurer or its designated administrator may agree to pay the full cost of automobile glass replacement, automobile glass repairs, automobile glass products, or automobile repairs.~~

~~(6) It is unlawful for a business or location that provides automobile glass replacement, automobile glass repair services, automobile glass products, or automobile repair services to charge or agree to charge an insured person or claimant more than an uninsured person for any automobile glass replacement, automobile glass repair services, automobile glass product, or automobile repair services.~~

~~(7) An insurer or its designated administrator that contracts with an independent adjuster may not be held liable for the independent adjuster's failure to comply with the terms of this section unless the independent adjuster is clearly acting at the direction of the insurer or its designated administrator.~~

~~(8) If the insured person or claimant uses a business or location for automobile glass replacement, automobile glass repair services, automobile glass products, or automobile repair services with which the insurer or its designated administrator does not have an established business relationship under subsection (2)(a) or that is not on a list provided under subsection (2)(b) or (2)(c), the insurer or its designated administrator may not be held liable for any services performed or products provided by the business or location that the insured person or claimant chooses to use.~~

~~(9) An insurer or its designated administrator that through the processing of repair bills obtains proprietary pricing information about an insurer or a business or location that provides automobile glass replacement, automobile glass repair services, automobile glass products, or automobile repair services may not disclose the proprietary pricing information obtained to any other insurer, designated administrator, or business or location that provides automobile glass replacement, automobile glass repair services, automobile glass products, or automobile repair services, except as is reasonably necessary to process a claim.~~

~~(10) In the event of any dispute concerning a provision of this section, the aggrieved person may submit a complaint to the commissioner for a determination in accordance with the provisions of Title 33,~~

~~chapter 1, part 7.~~

~~**Section 2.** Section 30-14-225, MCA, is amended to read:~~

~~**"30-14-225. Prohibited practices -- advertising allowed -- violations.** (1) A person engaged in automobile repair or the sale, repair, or replacement of automobile glass or in the business of automobile repair may not:~~

~~(a) advertise, promise to provide, or offer any coupon, credit, or rebate to pay all or part of an insurance deductible under a casualty or property insurance policy, including any incentive to purchase automobile glass or automobile repairs offered to the customer in which the customer, in conjunction with the purchase of automobile glass or automobile repairs, receives cash or other valuable consideration; or~~

~~(b) pay a sum or incentive to an individual or entity for directing automobile repair services or automobile glass replacement or repair or the purchase of a glass product.~~

~~(2) A person or association of persons engaged in automobile repair services or the sale, repair, or replacement of automobile glass may advertise services as to quality, service, and safety.~~

~~(3) A glass broker, as defined in 33-18-223, or an automobile repair business may not manage, handle, or arrange automobile glass replacement or glass repair work or automobile repair services for which the glass broker or the automobile repair business retains a percentage of the claim.~~

~~(4) Except as provided in 33-18-224, in a communication between an insurer and an insured regarding an insurance claim, the insurer may not:~~

~~(a) require, suggest, or encourage the use of the name of a particular automobile repair business or location; or~~

~~(b) mention or provide the name of a particular automobile repair business or location.~~

~~(5)~~(3) ~~(a) A violation of subsection (1)(a) is an unfair and deceptive act under 30-14-103.~~

~~(b) A person engaged in the sale, repair, or replacement of automobile glass or in the business of automobile repair who violates subsection (1)(a) is also subject to the insurance fraud protection provisions of Title 33, chapter 1, part 12."~~

~~**Section 3.** Section 33-18-222, MCA, is amended to read:~~

~~**"33-18-222. Prevailing market price.** For purposes of 33-18-221, 33-18-223, and 33-18-224~~ [section 1], ~~"prevailing market price" means the lowest competitive and generally accepted market price~~

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~~in a local area. The prevailing market price may not be less than cost as provided in 30-14-209."~~

~~NEW SECTION. **Section 4. Repealer.** Sections 33-18-221, 33-18-223, 33-18-224, and 33-18-1006, MCA, are repealed.~~

~~NEW SECTION. **Section 5. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 33, chapter 18, part 2, and the provisions of Title 33, chapter 18, part 2, apply to [section 1].~~

SECTION 1. SECTION 30-14-225, MCA, IS AMENDED TO READ:

"30-14-225. Prohibited practices -- advertising allowed -- violations. (1) A person engaged in ~~automobile repair or~~ the sale, repair, or replacement of automobile glass ~~or in the business of automobile repair~~ OR IN THE BUSINESS OF AUTOMOBILE REPAIR may not:

(a) advertise, promise to provide, or offer any coupon, credit, or rebate to pay all or part of an insurance deductible under a casualty or property insurance policy, including any incentive to purchase automobile glass ~~or automobile repairs~~ OR AUTOMOBILE REPAIRS offered to the customer in which the customer, in conjunction with the purchase of automobile glass ~~or automobile repairs~~ OR AUTOMOBILE REPAIRS, receives cash or other valuable consideration; or

(b) pay a sum or incentive to an individual or entity for directing ~~automobile repair services or~~ glass replacement or repair or the purchase of a glass product.

(2) A person or association of persons engaged in ~~automobile repair services or~~ the sale, repair, or replacement of automobile glass may advertise services as to quality, service, and safety.

(3) A glass broker, as defined in 33-18-223, ~~or an automobile repair business~~ may not manage, handle, or arrange automobile glass replacement or glass repair work ~~or automobile repair services~~ for which the glass broker ~~or the automobile repair business~~ retains a percentage of the claim.

~~(4) Except as provided in 33-18-224, in a communication between an insurer and an insured regarding an insurance claim, the insurer may not:~~

~~(a) require, suggest, or encourage the use of the name of a particular automobile repair business or location; or~~

~~(b) mention or provide the name of a particular automobile repair business or location.~~

~~(5)~~(4) (a) A violation of subsection (1)(a) is an unfair and deceptive act under 30-14-103.

(b) A person engaged in the sale, repair, or replacement of automobile glass ~~or in the business of automobile repair~~ OR IN THE BUSINESS OF AUTOMOBILE REPAIR who violates subsection (1)(a) is also subject to the insurance fraud protection provisions of Title 33, chapter 1, part 12."

SECTION 2. SECTION 33-18-221, MCA, IS AMENDED TO READ:

"33-18-221. Designation of specific repair shops ~~and discrimination against insured customers~~ prohibited -- lists allowed. (1) An insurance company, including its producers and adjusters, that issues or renews a policy of insurance in this state covering, in whole or part, a motor vehicle may not:

(a) require that a person insured under the policy use a particular company or location for providing automobile glass replacement, glass repair services, or glass products insured in whole or part by the policy; or

(b) engage in any act or practice of intimidation, coercion, or threat for or against an insured person to use a particular company or location to provide automobile glass replacement, glass repair services, or glass products insured, in whole or in part, under the terms of an insurance policy.

(2) (a) An insurance company may provide an insured with a list that includes the names of particular companies or locations providing automobile glass replacement, glass repair services, or glass products if some of the listed companies or locations are reasonably close and convenient to the insured. The insurance company may restrict the list to those companies or locations that meet reasonable standards of quality, service, and safety.

(b) The insured may use a nonlisted company or location at the insured's sole discretion, and subject to the provisions of subsections (2)(c) and (3), the insurance company will fully and promptly pay for the cost of automobile glass replacement, glass repair services, or glass products provided, less any deductible under the terms of the policy.

(c) If the insured does not use a list as provided in subsection (2)(a), the insurer may require the insured to obtain not more than three competitive bids to establish the cost of automobile glass replacement, glass repair services, or glass products provided.

(3) This section does not require an insurer to pay more for automobile glass replacement, glass repair services, or glass products than the lowest prevailing market price as defined in 33-18-222.

(4) Notwithstanding the provisions of subsections (1) through (3), an insurance company may

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agree to pay the full cost of glass replacement or repair.

~~(5) It is unlawful for a company or location that provides automobile glass replacement services to charge or agree to charge an insured customer more than an uninsured customer for any automobile glass replacement service.~~"

SECTION 3. SECTION 33-18-222, MCA, IS AMENDED TO READ:

"33-18-222. ~~Prevailing~~ Lowest prevailing market price. For purposes of 33-18-221, and 33-18-223, ~~and 33-18-224,~~ ~~"prevailing market price"~~ "lowest prevailing market price" means the lowest ~~competitive and generally accepted~~ market price in a local area. The LOWEST prevailing market price may not be less than cost as provided in 30-14-209."

SECTION 4. SECTION 33-18-223, MCA, IS AMENDED TO READ:

"33-18-223. Prohibited activities -- glass broker defined. (1) It is unlawful for an insurance company, individually or with others, to directly or indirectly:

(a) establish an agreement with any person to act as a glass broker for the insurance company under which the glass broker sets a price that must be met by a glass repair shop as a condition for doing glass replacement or glass repair work for the insurance company;

(b) establish an agreement with a glass broker that requires a glass repair shop to bill through that glass broker as a condition of doing glass replacement or glass repair work; or

(c) establish a price that must be met by a glass repair shop as a condition for doing glass replacement or glass repair work that is below the LOWEST prevailing market price as provided in 33-18-222~~;~~.

~~(d) establish an agreement for the processing of claims or bills with a glass broker or with an entity that has a financial interest in an entity in this state that installs or provides glass for installation; or~~

~~(e) share information obtained through the processing of glass replacement or glass repair bills with an entity that is involved directly or indirectly in any aspect of the glass manufacturing, replacement, or repair business.~~

(2) As used in this section, "glass broker" means an automobile glass company that acts as a third-party agent for the insurer whenever the glass broker enters into agreements with other automobile glass dealers to perform glass replacement or glass repair work ~~or that installs or manufactures glass or~~

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~~provides glass for installation~~."

SECTION 5. SECTION 33-18-224, MCA, IS AMENDED TO READ:

"**33-18-224. Designation of specific automobile body repair shops prohibited ~~-- certain requirements -- allowances~~.** (1) An insurance company, including its ~~employees~~ producers and adjusters, that issues or renews a policy of insurance in this state covering, in whole or in part, a motor vehicle may not:

(a) require ~~or encourage~~ that a person insured ~~or a claimant~~ under the policy ~~to~~ use a particular automobile ~~body~~ repair business or location; or

(b) engage in any act or practice that intimidates, coerces, or threatens an insured person ~~or a claimant~~ or that provides an incentive or inducement for an insured person ~~or a claimant~~ to use a particular automobile ~~body~~ repair business or location~~;~~.

~~(c) except as provided in subsection (2):~~

~~(i) suggest the use of a particular automobile repair business or location;~~

~~(ii) mention or provide the name of a particular automobile repair business or location;~~

~~(iii) direct an insured or claimant to an automobile repair business or location or entity in Montana that engages in or has a financial interest in the processing of a claim or bill unless the business or location has been selected by the insured or claimant; or~~

~~(iv) share information obtained through the processing of an automobile repair bill with an entity that is involved directly or indirectly in any aspect of the automobile repair business; or~~

~~(d) suggest or direct its appointed producers to suggest, mention, provide the name of, or encourage the use of a particular automobile repair business or location to an insured person or a claimant.~~

~~(2) (a) Subsections (1)(a), (1)(b), and (1)(c)(iii) apply to all insurance producers; and~~

~~(b) subsections (1)(c)(i) and (1)(c)(ii) apply only to insurance producers that:~~

~~(i) write automobile insurance for primarily one insurer; or~~

~~(ii) are contractually obligated to use one automobile insurer before using other insurers.~~

~~(3)~~(2) ~~An insurer may~~ For the purposes of this section, an incentive or inducement does not include:

(a) ~~provide~~ providing an insured person or a ~~claimant~~ customer with a list of all established automobile ~~body~~ repair businesses or locations reasonably close to the insured person or ~~claimant~~ customer

that offer a warranty for the automobile ~~body~~ repair services provided by the businesses or locations; ~~or~~

(b) ~~provide~~ providing an insured person or a ~~claimant~~ customer with a list of particular ~~automobile repair businesses or locations that are reasonably close to the insured person or claimant that meet~~ body repair shops meeting reasonable standards of quality, service, and safety when the list is requested by the insured person or customer; or

(c) referring to a warranty issued by an automobile ~~body~~ repair business or location.

~~(4) If an insurer elects to provide an insured person or a claimant with the list described in subsection (3)(b), the insurer shall:~~

~~(a) upon the request of any automobile repair business or location, make available the reasonable standards of quality, service, and safety that are to be met by automobile repair businesses or locations in order to be placed on the list. The standards may not exclude a business or location from being on the list solely on the basis of the size or location of the automobile repair business, the number of persons employed in the business, or pricing other than what is fair or reasonable in the market area of the automobile repair business or location.~~

~~(b) include on the list any automobile repair business or location that meets the standards and indicates in writing to the insurer that the business or location desires to be placed on the list.~~

~~(5) In the event of any dispute, the business or location may submit a complaint to the commissioner for a determination in accordance with the provisions of Title 33, chapter 1, part 7.~~

~~(6) In distributing the list provided for in subsection (3) to an insured or a claimant or in any discussion of the list with an insured or a claimant, an insurer may not express a preference or mention an advantage or inducement for the insured or the claimant to use a particular automobile repair facility or location on the list.~~

~~(7)~~(3) The insured may use a business or location at the insured's ~~or claimant's~~ sole discretion. ~~The~~, and the insurance company shall pay for the reasonable and necessary cost of the automobile body repair services for covered damages, less any deductible under the terms of the policy. This section does not require an insurer to pay more for automobile body repair services than the lowest prevailing market price, as defined in 33-18-222. ~~An insurer shall inform the insured person or claimant of the insured person's or claimant's rights under this subsection.~~

~~(8)~~(4) If the insured person ~~or claimant~~ uses an automobile ~~body~~ repair business or location not on a list provided under subsection ~~(3)(a) or (3)(b)~~ (2)(a) or (2)(b), the insurance company may not be held

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liable for any repair work performed by the automobile ~~body~~ repair business or location that the insured person chooses to use.

~~(9)~~(5) It is unlawful for an automobile ~~body~~ repair business or location to charge or agree to charge an insured customer more than an uninsured customer for any automobile ~~body~~ repair service.

~~(10)~~(6) An insurance company that contracts with an independent adjuster may not be held liable for the independent adjuster's failure to comply with the terms of this section ~~unless the independent adjuster is clearly acting at the direction of the insurance company~~.

~~(11)~~(7) For purposes of this section, "automobile ~~body~~ repair business or location" does not include a business or location that exclusively provides automobile glass replacement, glass repair services, or glass products."

SECTION 6. SECTION 33-18-1006, MCA, IS AMENDED TO READ:

"33-18-1006. Desist orders for prohibited practices ~~—court injunctions~~. ~~(1)~~ Violations of 33-18-221 through ~~33-18-224~~ 33-18-223 are subject to cease and desist orders of the commissioner issued under 33-18-1004.

~~(2) The commissioner, the attorney general, or a county attorney of the county where a violation of 33-18-221 through 33-18-224 is alleged may bring an action to enjoin any further violation of 33-18-221 through 33-18-224 in the first judicial district or in the county where the violation is alleged to have occurred.~~"

NEW SECTION. **Section 7. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 8. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 9. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to ~~January 1, 2000~~ OCTOBER 1, 1999.

- END -

SENATE BILL NO. 474

INTRODUCED BY D. GRIMES

A BILL FOR AN ACT ENTITLED: "AN ACT ~~PROHIBITING CERTAIN ACTS OR PRACTICES OF INSURERS WITH RESPECT TO AUTOMOBILE GLASS REPLACEMENT, AUTOMOBILE GLASS REPAIRS, AUTOMOTIVE GLASS PRODUCTS, AND AUTOMOBILE REPAIRS; ALLOWING INSURERS TO INFORM INSURED PERSONS AND CLAIMANTS ABOUT REPAIR OPTIONS AND PROGRAMS AVAILABLE UNDER THE INSURANCE POLICY; PROVIDING THAT AN INSURED PERSON OR CLAIMANT HAS THE RIGHT TO CHOOSE THE BUSINESS OR LOCATION FOR AUTOMOBILE GLASS REPLACEMENT OR REPAIRS, PURCHASE OF AUTOMOBILE GLASS PRODUCTS, OR AUTOMOBILE REPAIRS; REQUIRING THAT THE INSURED PERSON OR CLAIMANT BE INFORMED OF THE RIGHT TO CHOOSE; RESTRICTING THE DISTRIBUTION OF PROPRIETARY PRICING INFORMATION; PROVIDING FOR A GRIEVANCE PROCEDURE~~ GENERALLY REVISING THE INSURANCE UNFAIR TRADE PRACTICES LAW WITH RESPECT TO AUTOMOBILE GLASS REPLACEMENT, AUTOMOBILE GLASS REPAIR, AUTOMOBILE GLASS PRODUCTS, AND AUTOMOBILE

THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE REPRINTED. PLEASE REFER TO 2ND RD--2ND HOUSE COPY (TAN) FOR COMPLETE TEXT.

REFERENCE BILL AS AMENDED

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AN ACT GENERALLY REVISING THE INSURANCE UNFAIR TRADE PRACTICES LAW WITH RESPECT TO AUTOMOBILE GLASS REPLACEMENT, AUTOMOBILE GLASS REPAIR, AUTOMOBILE GLASS PRODUCTS, AND AUTOMOBILE REPAIR; AMENDING SECTIONS 30-14-225, 33-18-221, 33-18-222, 33-18-223, 33-18-224, AND 33-18-1006, MCA; PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 30-14-225, MCA, is amended to read:

"**30-14-225. Prohibited practices -- advertising allowed -- violations.** (1) A person engaged in ~~automobile repair or~~ the sale, repair, or replacement of automobile glass ~~or in the business of automobile repair~~ or in the business of automobile repair may not:

(a) advertise, promise to provide, or offer any coupon, credit, or rebate to pay all or part of an insurance deductible under a casualty or property insurance policy, including any incentive to purchase automobile glass ~~or automobile repairs~~ or automobile repairs offered to the customer in which the customer, in conjunction with the purchase of automobile glass ~~or automobile repairs~~ or automobile repairs, receives cash or other valuable consideration; or

(b) pay a sum or incentive to an individual or entity for directing ~~automobile repair services or~~ glass replacement or repair or the purchase of a glass product.

(2) A person or association of persons engaged in ~~automobile repair services or~~ the sale, repair, or replacement of automobile glass may advertise services as to quality, service, and safety.

(3) A glass broker, as defined in 33-18-223, ~~or an automobile repair business~~ may not manage, handle, or arrange automobile glass replacement or glass repair work ~~or automobile repair services~~ for which the glass broker ~~or the automobile repair business~~ retains a percentage of the claim.

~~(4) Except as provided in 33-18-224, in a communication between an insurer and an insured regarding an insurance claim, the insurer may not:~~

~~(a) require, suggest, or encourage the use of the name of a particular automobile repair business or location; or~~

~~(b) mention or provide the name of a particular automobile repair business or location.~~

~~(5)~~(4) (a) A violation of subsection (1)(a) is an unfair and deceptive act under 30-14-103.

(b) A person engaged in the sale, repair, or replacement of automobile glass ~~or in the business of automobile repair~~ or in the business of automobile repair who violates subsection (1)(a) is also subject to the insurance fraud protection provisions of Title 33, chapter 1, part 12."

Section 2. Section 33-18-221, MCA, is amended to read:

"**33-18-221. Designation of specific repair shops ~~and discrimination against insured customers~~ prohibited -- lists allowed.** (1) An insurance company, including its producers and adjusters, that issues or renews a policy of insurance in this state covering, in whole or part, a motor vehicle may not:

(a) require that a person insured under the policy use a particular company or location for providing automobile glass replacement, glass repair services, or glass products insured in whole or part by the policy; or

(b) engage in any act or practice of intimidation, coercion, or threat for or against an insured person to use a particular company or location to provide automobile glass replacement, glass repair services, or glass products insured, in whole or in part, under the terms of an insurance policy.

(2) (a) An insurance company may provide an insured with a list that includes the names of particular companies or locations providing automobile glass replacement, glass repair services, or glass products if some of the listed companies or locations are reasonably close and convenient to the insured. The insurance company may restrict the list to those companies or locations that meet reasonable standards of quality, service, and safety.

(b) The insured may use a nonlisted company or location at the insured's sole discretion, and subject to the provisions of subsections (2)(c) and (3), the insurance company will fully and promptly pay for the cost of automobile glass replacement, glass repair services, or glass products provided, less any deductible under the terms of the policy.

(c) If the insured does not use a list as provided in subsection (2)(a), the insurer may require the insured to obtain not more than three competitive bids to establish the cost of automobile glass

replacement, glass repair services, or glass products provided.

(3) This section does not require an insurer to pay more for automobile glass replacement, glass repair services, or glass products than the lowest prevailing market price as defined in 33-18-222.

(4) Notwithstanding the provisions of subsections (1) through (3), an insurance company may agree to pay the full cost of glass replacement or repair.

~~(5) It is unlawful for a company or location that provides automobile glass replacement services to charge or agree to charge an insured customer more than an uninsured customer for any automobile glass replacement service.~~"

Section 3. Section 33-18-222, MCA, is amended to read:

"**33-18-222.** ~~**Prevailing**~~ **Lowest prevailing market price.** For purposes of 33-18-221~~,~~ and 33-18-223, ~~and 33-18-224,~~ ~~"prevailing market price"~~ "lowest prevailing market price" means the lowest ~~competitive and generally accepted~~ market price in a local area. The lowest prevailing market price may not be less than cost as provided in 30-14-209."

Section 4. Section 33-18-223, MCA, is amended to read:

"**33-18-223. Prohibited activities -- glass broker defined.** (1) It is unlawful for an insurance company, individually or with others, to directly or indirectly:

(a) establish an agreement with any person to act as a glass broker for the insurance company under which the glass broker sets a price that must be met by a glass repair shop as a condition for doing glass replacement or glass repair work for the insurance company;

(b) establish an agreement with a glass broker that requires a glass repair shop to bill through that glass broker as a condition of doing glass replacement or glass repair work; or

(c) establish a price that must be met by a glass repair shop as a condition for doing glass replacement or glass repair work that is below the lowest prevailing market price as provided in 33-18-222~~;~~.

~~(d) establish an agreement for the processing of claims or bills with a glass broker or with an entity that has a financial interest in an entity in this state that installs or provides glass for installation;~~ ~~or~~

~~(c) share information obtained through the processing of glass replacement or glass repair bills with an entity that is involved directly or indirectly in any aspect of the glass manufacturing, replacement, or repair business.~~

(2) As used in this section, "glass broker" means an automobile glass company that acts as a third-party agent for the insurer whenever the glass broker enters into agreements with other automobile glass dealers to perform glass replacement or glass repair work ~~or that installs or manufactures glass or provides glass for installation~~."

Section 5. Section 33-18-224, MCA, is amended to read:

"**33-18-224. Designation of specific automobile body repair shops prohibited ~~-- certain requirements -- allowances~~.** (1) An insurance company, including its ~~employees~~ producers and adjusters, that issues or renews a policy of insurance in this state covering, in whole or in part, a motor vehicle may not:

(a) require ~~or encourage~~ that a person insured ~~or a claimant~~ under the policy ~~to~~ use a particular automobile repair business or location; or

(b) engage in any act or practice that intimidates, coerces, or threatens an insured person ~~or a claimant~~ or that provides an incentive or inducement for an insured person ~~or a claimant~~ to use a particular automobile repair business or location;.

~~(c) except as provided in subsection (2):~~

~~(i) suggest the use of a particular automobile repair business or location;~~

~~(ii) mention or provide the name of a particular automobile repair business or location;~~

~~(iii) direct an insured or claimant to an automobile repair business or location or entity in Montana that engages in or has a financial interest in the processing of a claim or bill unless the business or location has been selected by the insured or claimant; or~~

~~(iv) share information obtained through the processing of an automobile repair bill with an entity that is involved directly or indirectly in any aspect of the automobile repair business; or~~

~~(d) suggest or direct its appointed producers to suggest, mention, provide the name of, or encourage the use of a particular automobile repair business or location to an insured person or a claimant.~~

~~(2) (a) Subsections (1)(a), (1)(b), and (1)(c)(iii) apply to all insurance producers; and~~

~~(b) subsections (1)(c)(i) and (1)(c)(ii) apply only to insurance producers that:~~

~~(i) write automobile insurance for primarily one insurer; or~~

~~(ii) are contractually obligated to use one automobile insurer before using other insurers.~~

~~(3)~~(2) ~~An insurer may~~ For the purposes of this section, an incentive or inducement does not include:

(a) ~~provide~~ providing an insured person or a ~~claimant~~ customer with a list of all established automobile repair businesses or locations reasonably close to the insured person or ~~claimant~~ customer that offer a warranty for the automobile repair services provided by the businesses or locations; ~~or~~

(b) ~~provide~~ providing an insured person or a ~~claimant~~ customer with a list of particular ~~automobile repair businesses or locations that are reasonably close to the insured person or claimant that meet~~ body shops meeting reasonable standards of quality, service, and safety when the list is requested by the insured person or customer; or

(c) referring to a warranty issued by an automobile repair business or location.

~~(4) If an insurer elects to provide an insured person or a claimant with the list described in subsection (3)(b), the insurer shall:~~

~~(a) upon the request of any automobile repair business or location, make available the reasonable standards of quality, service, and safety that are to be met by automobile repair businesses or locations in order to be placed on the list. The standards may not exclude a business or location from being on the list solely on the basis of the size or location of the automobile repair business, the number of persons employed in the business, or pricing other than what is fair or reasonable in the market area of the automobile repair business or location.~~

~~(b) include on the list any automobile repair business or location that meets the standards and indicates in writing to the insurer that the business or location desires to be placed on the list.~~

~~(5) In the event of any dispute, the business or location may submit a complaint to the commissioner for a determination in accordance with the provisions of Title 33, chapter 1, part 7.~~

~~(6) In distributing the list provided for in subsection (3) to an insured or a claimant or in any discussion of the list with an insured or a claimant, an insurer may not express a preference or mention an advantage or inducement for the insured or the claimant to use a particular automobile repair facility~~

~~or location on the list.~~

~~(7)~~(3) The insured may use a business or location at the insured's ~~or claimant's~~ sole discretion. ~~The~~, and the insurance company shall pay for the reasonable and necessary cost of the automobile body repair services for covered damages, less any deductible under the terms of the policy. This section does not require an insurer to pay more for automobile body repair services than the lowest prevailing market price, as defined in 33-18-222. ~~An insurer shall inform the insured person or claimant of the insured person's or claimant's rights under this subsection.~~

~~(8)~~(4) If the insured person ~~or claimant~~ uses an automobile repair business or location not on a list provided under subsection ~~(3)(a) or (3)(b)~~ (2)(a) or (2)(b), the insurance company may not be held liable for any repair work performed by the automobile repair business or location that the insured person chooses to use.

~~(9)~~(5) It is unlawful for an automobile repair business or location to charge or agree to charge an insured customer more than an uninsured customer for any automobile repair service.

~~(10)~~(6) An insurance company that contracts with an independent adjuster may not be held liable for the independent adjuster's failure to comply with the terms of this section ~~unless the independent adjuster is clearly acting at the direction of the insurance company~~.

~~(11)~~(7) For purposes of this section, "automobile repair business or location" does not include a business or location that exclusively provides automobile glass replacement, glass repair services, or glass products."

Section 6. Section 33-18-1006, MCA, is amended to read:

"**33-18-1006. Desist orders for prohibited practices ~~-- court injunctions~~.** ~~(1)~~ Violations of 33-18-221 through ~~33-18-224~~ 33-18-223 are subject to cease and desist orders of the commissioner issued under 33-18-1004.

~~(2) The commissioner, the attorney general, or a county attorney of the county where a violation of 33-18-221 through 33-18-224 is alleged may bring an action to enjoin any further violation of 33-18-221 through 33-18-224 in the first judicial district or in the county where the violation is alleged to have occurred.~~"

Section 7. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 8. Effective date. [This act] is effective on passage and approval.

Section 9. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to October 1, 1999.

- END -